

**Exhibit 1-A**

**Proof of Claim No. 1360**

B 10 Modified (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK			PROOF OF CLAIM
Name of Debtor: <b>GMAC MORTGAGE LLC</b>		Case Number: <b>12-12032</b>	
NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Robert Sweeting</b>			<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim</b> Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <b>Robert Sweeting</b> <b>ROBERT SWEETING VS JASON KISHABA, SANDRA JAQUEZ, PETER SAUERACKER, INTERNATIONAL MRTG INC, CAITLIN CHEN, FREMONT INVEST ET AL</b> <b>7071 Warner Ave, Suite F81</b> <b>Huntington Beach, CA 92647</b> Telephone number: <b>562 3948218</b> email: <b>POWERBRAKEBOB@MSN.COM</b>			
Name and address where payment should be sent (if different from above):			<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.  <b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)( ).  <b>Amount entitled to priority:</b> \$ _____  <i>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
Telephone number: _____ email: _____			
<b>1. Amount of Claim as of Date Case Filed: \$ 79,170,000.00 CASE# ORANGECTY 30-2008-00104237</b> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
<b>2. Basis for Claim: WRONGFUL FORECLOSURE/COURT ACTION</b> (See instruction #2)			
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <b>1331</b>	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)	
<b>4. Secured Claim (See instruction #4)</b> Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b> <b>Value of Property: \$ _____ Annual Interest Rate _____ %</b> <input type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) <b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim,</b> <b>If any: \$ _____ Basis for perfection: _____</b> <b>Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____</b>			
<b>6. Claim Pursuant to 11 U.S.C. § 503(b)(9):</b> Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6)			
<b>7. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)			
<b>8. Documents:</b> Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "redacted")  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:			
<b>9. Signature:</b> (See instruction #9) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)  I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <b>ROBERT SWEETING</b> Title: _____ Company: _____ Address and telephone number (if different from notice address above): _____ Telephone number: _____ Email: _____			
<b>Penalty for presenting fraudulent claim:</b> Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.			<b>RECEIVED</b>  <b>OCT 16 2012</b>  <b>KURTZMAN CARSON CONSULTANTS</b>  <b>COURT USE ONLY</b>

- DO NOT FILE WITH THE COURT -  
-UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

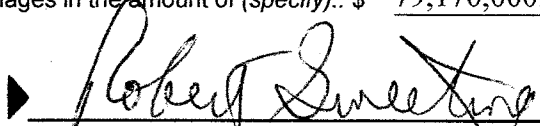
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): ROBERT SWEETING, PRO PER 7071 WARNER AVE. BOX F 81 HUNTINGTON BEACH, CA. 92647		TELEPHONE NO.: 562-394-8218	FOR COURT USE ONLY  <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER  AUG 23 2012  ALAN CARLSON, Clerk of the Court
ATTORNEY FOR (name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 CIVIC CENTER DRIVE, WEST MAILING ADDRESS: CITY AND ZIP CODE: SANTA ANA 92702 BRANCH NAME: CENTRAL			
PLAINTIFF: ROBERT SWEETING DEFENDANT: JASON KISHABA, ET AL			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)		CASE NUMBER: 30-2008-00104237	

To (name of one defendant only): GMAC MORTGAGE, LLC.  
Plaintiff (name of one plaintiff only): ROBERT SWEETING  
seeks damages in the above-entitled action, as follows:

	AMOUNT
1. General damages	
a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience .....	\$ 2,000,000.00
b. <input checked="" type="checkbox"/> Emotional distress .....	\$ 2,000,000.00
c. <input checked="" type="checkbox"/> Loss of consortium .....	\$ 500,000.00
d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) .....	\$
e. <input checked="" type="checkbox"/> Other (specify) LOSS OF CREDIT RATING .....	\$ 1,500,000.00
f. <input checked="" type="checkbox"/> Other (specify) LOSS OF BOSCH CONTRACT .....	\$ 3,000,000.00
g. <input type="checkbox"/> Continued on Attachment 1.g.	
2. Special damages	
a. <input type="checkbox"/> Medical expenses (to date) .....	\$
b. <input type="checkbox"/> Future medical expenses (present value) .....	\$
c. <input checked="" type="checkbox"/> Loss of earnings (to date) .....	\$ 750,000.00
d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) .....	\$ 2,500,000.00
e. <input checked="" type="checkbox"/> Property damage .....	\$ 3,584,000.00
f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) .....	\$
g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) .....	\$
h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) .....	\$
i. <input type="checkbox"/> Other (specify) .....	\$
j. <input type="checkbox"/> Other (specify) .....	\$
k. <input type="checkbox"/> Continued on Attachment 2.k.	
3. <input checked="" type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify).. \$ 79,170,000.00 when pursuing a judgment in the suit filed against you.	

Date: AUGUST 1, 2012  
ROBERT SWEETING

(TYPE OR PRINT NAME)

  
(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

(Proof of service on reverse)

PLAINTIFF: ROBERT SWEETING	CASE NUMBER:
DEFENDANT: JASON KISHABA, ET AL	30-2008-00104237

**PROOF OF SERVICE**

(After having the other party served as described below, with any of the documents identified in item 1, have the person who served the documents complete this Proof of Service. Plaintiff cannot serve these papers.)

1. I served the

- a. ☒ Statement of Damages ☐ Other (specify):
- b. on (name): GMAC MORTGAGE, LLC.
- c. by serving ☒ defendant ☐ other (name and title or relationship to person served):
- d. ☒ by delivery ☐ at home ☐ at business  
(1) date:  
(2) time:  
(3) address: 19100 VON KARMAN AVE. STE 700, IRVINE, CA.
- e. ☐ by mailing  
(1) date:  
(2) place:

2. Manner of service (check proper box):

- a. ☐ **Personal service.** By personally delivering copies. (CCP § 415.10)
- b. ☒ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP § 415.20(a))
- c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP § 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)
- d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP § 415.30) (Attach completed acknowledgment of receipt.)
- e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP § 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)
- f. ☐ Other (specify code section):  
☐ additional page is attached.

3. At the time of service I was at least 18 years of age and not a party to this action.

4. Fee for service: \$ 0

5. Person serving:

- a. ☐ California sheriff, marshal, or constable
- b. ☐ Registered California process server
- c. ☐ Employee or independent contractor of a registered California process server
- d. ☒ Not a registered California process server
- e. ☐ Exempt from registration under Bus. & Prof. Code § 22350(b)

f. Name, address and telephone number and, if applicable, county of registration and number:

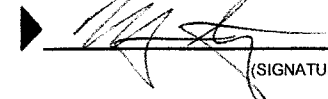
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Date: JULY 27, 2012

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

  
(SIGNATURE)

  
(SIGNATURE)

1 Robert Sweeting, Pro Per  
16077 Crete Lane.  
2 Huntington Beach, Ca. 92649  
Ph. 562-394-8218  
3 Fax 714-846-8522  
4

5 Plaintiff Robert Sweeting  
6  
7  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER  
11

12 ROBERT SWEETING,  
13

14 *Plaintiff,*  
15

16 vs.  
17

18 JASON KISHABA, an individual; SANDRA  
19 JAQUEZ, an individual, PETER  
20 SAUERACKER, an individual;  
21 INTERNATIONAL MORTGATGE, Inc.'  
22 CAITLIN CHEN, an individual;  
23 FREEMONT INVESTMENT AND LOAN,  
24 INC.; GMAC MORTGAGE LLC.; all  
25 persons unknown, claiming any legal or  
26 equitable right, title, estate, lien or interest in  
27 the property described in the complaint  
28 adverse to plaintiff's title, or any cloud on  
plaintiff's title thereto and DOES 1 through  
25, inclusive,

*Defendants.*

CASE No.: 30-2008-104237

VERIFIED SECOND AMENDED  
COMPLAINT FOR:

1. FOR NEGLIGENCE
2. COMMON COUNTS
3. BREACH OF FIDUCIARY DUTY
4. MISREPRESENTATION
5. FOR REFORMATION OF CONTRACT
6. BREACH OF CONTRACT
7. BREACH OF CONTRACT
8. DECEIT
9. CANCELLATION OF WRITTEN INSTRUMENT
10. WRONGFUL FORECLOSURE
11. QUIET TITLE
12. BUSINESS AND PROFESSIONS CODE §17200
13. VIOLATION OF TRUTH AND LENDING ACT, 15 U.S.C. § 1601 ET SEQ., AND FEDERAL RESERVE REGULATION Z 12 C.F.R. § 226 ET SEQ.
14. DEFAMATION AND TORTIOUS INTERFERENCE WITH CREDIT
15. ACCOUNTING

Assigned for All Purposes to DEPT.:  
C25, the Hon Randell Wilkenson presiding

1 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

- 2 1. Defendant, JASON KISHABA, (hereinafter alternatively "Defendant /KISHABA") is an  
3 individual residing in Orange County, California.
- 4 2. Defendant, SANDRA JAQUEZ, (hereinafter alternatively "Defendant/JAQUEZ") is an  
5 individual residing in Orange County,
- 6 3. Defendant, PETER SAUERACKER, (hereinafter alternatively  
7 "Defendant/SAUERACKER") is an individual residing in Orange County, California.
- 8 4. Defendant, INTERNATIONAL MORTGAGE, INC. (hereinafter alternatively  
9 "Defendant/INTERNATIONAL") is a business entity, form unknown, conducting  
10 business within the County of Orange, State of California.
- 11 5. Defendant INTERNATIONAL ESCROW is a business entity, form unknown, conducting  
12 business within the County of Orange, State of California.
- 13 6. Defendant ANTHONY HAWORTH, is sued individually and as owner and/or principal  
14 of International Escrow and International Mortgage. His principal place of business is in  
15 the County of Orange.
- 16 7. Defendant, CAITLIN CHEN, (hereinafter alternatively "Defendant/CHEN") is an  
17 individual residing in Orange County, California.
- 18 8. Defendant, FREMONT INVESTMENT AND LOAN, INC. (hereinafter alternatively  
19 "Defendant/FREMONT") is a business entity, form unknown, conducting business within  
20 the County of Orange, State of California.
- 21 9. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEM ("MERS") at all  
22 times relevant was a Delaware Corporation. Based on information and belief, MERS is  
23 currently a suspended from doing business in California. MERS transacts business in  
24 California and at all relevant times promoted, distributed, and/or purchased mortgage  
25 loans, an example of which is the subject of this Complaint throughout the United States,  
26 including Huntington Beach, California. The Note provides in part,  
27 "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a  
28 separate corporation that is acting solely as a nominee for Lender and

1 Lender's successors and assigns. MERS is the beneficiary under this  
2 Security Instrument."

3 The use of MERS obfuscates the chain of title, securitizing loans and hiding the true  
4 owner of said notes. Plaintiff contends that MERS is unlawful and deprives the County  
5 of tax revenue and is used for the purpose of facilitating foreclosures by hiding the  
6 ownership of property from the chain of title.

7 10. Defendant, GMAC MORTGAGE LLC, (hereinafter alternatively "Defendant/GMAC") is  
8 a business entity, form unknown, conducting business within the County of Orange, State  
9 of California.

10 11. Defendant TCIF REO GCM California, LLC (hereinafter referred to as "Truman  
11 Capital" or "Truman") is a Delaware Corporation with its principal place of business in  
12 Armonk, NY.

13 12. Defendant Island Source II LLC is a Delaware Limited Liability  
14 Company with its principal place of business unknown.

15 13. Defendant CHICAGO TITLE INSURANCE COMPANY is a California corporation with  
16 its principal place of business in Santa Ana, County of Orange, State of California.

17 14. Defendant G and Z Appraisers is a business entity of unknown form which  
18 conducts business in the County of Orange, State of California.

19 15. Nazeh Muayadazem is a licensed real estate broker whose principal place of business is  
20 in the County of Orange, State of California. He was a real estate appraiser and owner of  
21 G & Z Realty and G & Z Appraisers.

22 16. Plaintiff is informed, believes, and thereon alleges that INTERNATIONAL consisted of a  
23 mortgage brokerage and an escrow company that unlawfully secured the plaintiff's  
24 refinance loan and escrow related to the loan.

25 17. Plaintiff is informed and believes, and thereon alleges that SAUERACKER was an  
26 employee of INTERNATIONAL who was responsible for plaintiff's refinance loan.

27 18. Plaintiff is informed, believes, and thereon alleges that FREMONT was the lender on his  
28 refinance loan transaction.

- 1 19. Plaintiff is informed, believes, and thereon alleges that JAQUEZ was an employee of  
2 INTERNATIONAL who was responsible for plaintiff's escrow.
- 3 20. Plaintiff is informed, believes, and thereon alleges that CHEN was the broker of record  
4 for INTERNATIONAL during the pendency of plaintiff's refinance loan and escrow.
- 5 21. Plaintiff is informed, believes, and thereon alleges, that at all times relevant hereto,  
6 defendants, and each of them, were agents, servants, and employees of each of the  
7 remaining co-defendants, and in doing the things herein alleged, were acting within the  
8 purpose and scope of such agency, service and employment, with the permission, consent,  
9 and knowledge of each of the remaining co-defendants.
- 10 22. The defendants herein named as "all persons unknown, claiming any legal or equitable  
11 right, title, estate, lien or interest in the property described in the complaint adverse to  
12 plaintiff's title, or any cloud on plaintiff's title thereto" (hereinafter "UNKNOWN  
13 DEFENDANTS") are unknown to plaintiff. These UNKNOWN DEFENDANTS, and  
14 each of them, claim some right, title, estate, lien, or interest in the hereinafter-described  
15 property adverse to plaintiff's title and their claims, and each of them, constitute a cloud  
16 on plaintiff's title to that property.
- 17 23. Plaintiff is ignorant of the true names and capacity of defendants sued in this complaint as  
18 DOES 1 through 25, inclusive, and therefore sues these defendants by these fictitious  
19 names. Plaintiff will amend this complaint once the true names and capacities are  
20 ascertained. The Plaintiff is informed, believes, and thereon alleges that each of the  
21 fictitiously named defendants are responsible in some manner for the occurrences herein  
22 alleged, and that the plaintiff's damages as herein alleged were proximately caused by  
23 their conduct. Plaintiff is informed, believes, and thereon alleges that each of these  
24 fictitiously named defendants claim some right, title, estate, lien or interest in the  
25 hereinafter-described property adverse to plaintiff's title, and their claims, and each of  
26 them, constitute a cloud on plaintiff's title to that property.
- 27 24. At all times relevant hereto, the defendants CHICAGO TITLE COMPANY, KISHABA,  
28 SANDRA JAQUEZ, PETER SAUERACKER, INTERNATIONAL MORTGAGE, INC.,



1 INTERNATIONAL ESCROW, ANTHONY HAWORTH, CAITLIN CHEN, FREMONT  
2 INVESTMENT AND LOAN, INC. GMAC MORTGAGE LLC, TCIF REO GCM  
3 California, LLC, Island Source II LLC, Nazeh Muayadazem, and G and Z Appraisers and  
4 Does 1 to 25 acting alone or as agents, or as employees, affiliates, or "nominees", or in  
5 concert with one another or other defendants, in the ordinary course Of their business,  
6 regularly extend or offered to extend consumer credit, for which a finance charge is  
7 imposed or which, by written agreement, is payable in more than four installments and is  
8 the person to whom the transaction which is the subject of this, action is initially payable,  
9 making defendants a creditor within the meaning of TILA, 15 U.S.C. §1602(f) and  
10 Regulation Z § 226.2(a)(17) or an assignee within the meaning of 15 U.S.C. §1641.

11 25. The real property that is the subject matter of this litigation is plaintiff's home of over  
12 twenty-two (22) years and is located at 16077 Crete Lane, Huntington Beach, California  
13 92649 and legally described as follows:

14 PARCEL 1

15 LOT 30 OF TRACT NO. 9924, IN THE CITY OF HUNTINGTON BEACH, COUNTY  
16 OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 431  
17 PAGES 22 AND 23 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE  
18 COUNTY RECORDER OF SAID COUNTY.

19 PARCEL 2

20 AN EASEMENT FOR USE AND ENJOYMENT OF THE COMMON AREA, BEING  
21 LOT 46 OF SAID TRACT NO. 9924, REFERRED TO IN PARCEL 1 ABOVE, AS SET  
22 FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND  
23 RESTRICTIONS RECORDED IN BOOK 12914 PAGE 929, ET SEQ., OF OFFICIAL  
24 RECORDS OF ORANGE COUNTY,' CALIFORNIA.

25 APN# 178-741-30

26 (hereinafter "SUBJECT PROPERTY").

27 26. Defendant GMAC, as "nominee for the lender" or any other person or entity held and/or  
28 holds a security interest in the plaintiff's home located at 16077 Crete Lane, Huntington

1 Beach, California 92649.

2 27. On or about May 2006, plaintiff began discussing refinancing the SUBJECT PROPERTY  
3 with one of his business clients, Mr. Robbie De Capua, who works for Ramsey Group  
4 Financial Services.

5 28. Mr. De Capua was unable to complete a refinance of the subject property, but brought in  
6 plaintiff KISHABA as a partner who worked for M&M and Associates Mortgage Brokers  
7 to complete the loan.

8 29. Mr. De Capua and KISHABA promised plaintiff to refinance the SUBJECT PROPERTY  
9 at a fixed annual percentage rate of 7.5%, with a one-half point broker fee, a one-year  
10 prepayment penalty, and one hundred five thousand dollars (\$105,000) cash out.

11 30. Beginning approximately in June 2006, KISHABA would promise plaintiff that the  
12 refinance of the SUBJECT PROPERTY was going to be completed that week, but he  
13 would come up with an excuse for the failure to close and promise that it would close any  
14 day.

15 31. Based on KISHABA'S representations that the loan would close any day plaintiff stopped  
16 making his regular mortgage payments.

17 32. In or about November 2006, KISHABA. informed plaintiff that KISHABA had changed  
18 employer and that he now worked for INTERNATIONAL. KISHABA also informed  
19 plaintiff that he would place the refinance of the SUBJECT PROPERTY with  
20 INTERNATIONAL as the mortgage broker.

21 33. Throughout the time that plaintiff dealt with KISHABA, regarding the refinance of the  
22 SUBJECT PROPERTY, KISHABA continually provided plaintiff documents that  
23 contradicted the terms promised by KISHABA.

24 34. In fact, KISHABA had three separate loan document signings for plaintiff which occurred  
25 on or about the beginning of November 2006, December 5, 2006, and December 8, 2006.

26 35. In early November 2006, plaintiff was in Akron, Ohio. KISHABA sent a notary public to  
27 plaintiff with loan documents to sign. At this point, plaintiff was placed in a severe  
28 financial bind by KISHABA'S prior representations that the loan would close any day.

- 1 When plaintiff looked over the documents that the notary brought, he noticed that the  
2 terms were not what KISHABA had promised and that there was a two-year prepayment  
3 penalty instead of the one-year prepayment penalty promised.
- 4 36. Plaintiff called KISHABA who said to just sign the documents for the notary and that  
5 KISHABA would fix the problems later. Plaintiff interlineated certain pages wherein he  
6 thought the terms were not as promised and simply unacceptable. Plaintiff handed the  
7 documents to the notary.
- 8 37. On or about December 5 2006, KISHABA sent another notary to plaintiff's business.  
9 Again, the documents included hidden terms that were contrary to KISHABA'S promised  
10 terms including a two-year prepayment penalty. Plaintiff refused to sign the page  
11 containing a two-year prepayment penalty, but signed the remaining pages.
- 12 38. On or about November 22, 2006, FREMONT sent plaintiff a letter and good faith  
13 estimate indicating an interest rate of 9.8% and broker fees of \$24,155. (First page  
14 [Second page missing] of FREMONT Letter and Good Faith Estimate are attached hereto  
15 as "Exhibit A" and incorporated by reference.)
- 16 39. On or about November 30, 2006, INTERNATIONAL created a Borrower's Estimated  
17 Closing Costs document that indicated plaintiff was to receive \$69,192.29 cash out on the  
18 refinance. (Borrower's Estimated Closing Costs drafted by INTERNATIONAL and dated  
19 November 30, 2006 is attached hereto as "Exhibit B" and incorporated by reference.)
- 20 40. On or about December 5, 2006, INTERNATIONAL created another Borrower's  
21 Estimated Closing Costs document that indicated plaintiff was to receive \$65,605.36 cash  
22 out on the refinance. (Borrower's Estimated Closing Costs drafted by  
23 INTERNATIONAL and dated December 5, 2006 [First page shows letterhead that is cut  
24 off of second page] is attached hereto as "Exhibit C" and incorporated by reference.)
- 25 41. On or about December 8, 2006, KISHABA came to plaintiff's home with a notary to sign  
26 documents. At this point, KISHABA informed plaintiff that because of plaintiff's bad  
27 credit, which was directly related to the extended loan process and KISHABA'S promises  
28 that the loan was closing "any day," plaintiff would only receive \$65,000 cash out.

- 1 42. Also on or about December 8, 2006, KISHABA had plaintiff sign a Form 1003 Uniform  
2 Residential Loan Application. (Form 1003 Application Dated December 8, 2006 is  
3 attached hereto as "Exhibit D" and incorporated by reference.)
- 4 43. Plaintiff also signed the Deed of Trust securing the loan with the SUBJECT PROPERTY  
5 on December 8, 2006, which necessarily precluded the required loan disclosures by  
6 defendants.
- 7 44. On or about December 8, 2006, KISHABA promised plaintiff that the February mortgage  
8 payment would be paid by INTERNATIONAL from the loan proceeds. (See Amended  
9 Escrow Instructions dated December 20, 2006 attached hereto as "Exhibit E" and  
10 incorporated by reference.)
- 11 45. Due to his reliance on KISHABA'S promise of a loan closing "any day" beginning in June  
12 2006, plaintiff accumulated significant penalties, late fees, and suffered substantial  
13 damage to his credit.
- 14 46. Because of the financial condition that KISHABA placed plaintiff in, plaintiff signed the  
15 loan documents on December 8, 2006, but did not see or sign any document indicating  
16 that a two-year prepayment penalty would apply.
- 17 47. Each time that plaintiff signed documents KISHABA failed to give a copy to plaintiff  
18 despite plaintiff's request for copies, but promised that plaintiff would receive copies by  
19 mail.
- 20 48. At no time during any of the document signings did plaintiff receive any documents  
21 regarding the loan. Further, plaintiff received no proper documentation regarding the  
22 mandatory disclosures required by the Federal Truth and Lending law including a  
23 three-day right to rescind this transaction.
- 24 49. Plaintiff eventually received blank notices of right to cancel; however, there was no date  
25 indicating when the right to cancel accrued of the time within which to rescind.
- 26 50. Plaintiff is informed, believes, and thereon alleges that KISHABA used document's from  
27 all three document signings to complete the final loan submission package.
- 28 51. KISHABA mislead, lied, and lead a campaign of confusion and ever altered annual

1 percentage rates, broker points, fees, and prepayment penalties.

2 52. On or about December 20, 2006, JAQUEZ on behalf of INTERNATIONAL, sent  
3 plaintiff a document indicating that the escrow was closed as of December 20, 2006, and  
4 that also indicates plaintiff would be receiving a wire transfer in the amount of  
5 \$25,128.44. (See Letter dated December 20, 2006 attached hereto as "Exhibit F" and  
6 incorporated by reference.)

7 53. On or about December 20, 2006, FREMONT recorded a Deed of Trust dated December  
8 8, 2006 securing a loan against the SUBJECT PROPERTY in the amount of \$773,500.  
9 (See Deed of Trust recorded December 20, 2006 attached hereto as "Exhibit G" and  
10 incorporated by reference.)

11 54. On or about January 1, 2007, INTERNATIONAL faxed a HUD-1 Statement indicating  
12 that plaintiff's cash out would be \$67,906.85. (See HUD-1 faxed January 4, 2007 attached  
13 hereto as "Exhibit H" and incorporated by reference.)

14 55. Despite the multiple promises and various amounts of cash out listed, plaintiff never  
15 received any documentation or information that he would receive less than \$65,605.36  
16 cash from the refinance transaction.

17 56. However, INTERNATIONAL sent only one wire to plaintiff in the amount of  
18 \$25,128.44. Plaintiff did not receive any other payment from INTERNATIONAL or  
19 anyone in relation to the refinance.

20 57. Thus, plaintiff's cash had gone down from the original \$105,000 promised by KISHABA  
21 to \$65,605.36 listed in loan and HUD-1 statements to actually receiving \$25,128.44.

22 58. Plaintiff called INTERNATIONAL to determine when he was going to receive the  
23 remaining \$40,476.92. INTERNATIONAL employees refused to tell plaintiff what  
24 happened to the remaining funds or how they had applied those funds.

25 INTERNATIONAL further refused to provide plaintiff with any further documents,  
26 deeds, notes, loan disclosures, escrow documents, or HUD-1 Statements.

27 59. KISHABA was not properly licensed in relation to the loan transaction. KISHABA is not  
28 licensed as a real estate agent. INTERNATIONAL MORTGAGE and its sister company,

1 INTERNATIONAL ESCROW, were both suspended a month before the loan funded.  
2 On or before November 20, 2006, before consummation of the loan, International  
3 Mortgage's and International Escrow's licenses were suspended because they failed to  
4 maintain the required surety bond. At Paragraph 11 of Order Revoking Escrow Agent's  
5 License, it indicates that on October 12, 2007, the State of California Department of  
6 Corporations revoked International Mortgage Company's finance lender's license  
7 pursuant to Fin. C. § 22107 effective November 6, 2007. International had "commingled  
8 trust funds ... or otherwise made unauthorized disbursements of trust funds ... had a trust  
9 account shortage ... and had failed to maintain and/or provide books and records to the  
10 Commission..."

11 60. Kishaba, International Mortgage and International Escrow then proceeded to rip off  
12 Plaintiff for points up front and loan proceeds on the back side.

13 61. Plaintiff is informed and believes, and thereon alleges, that INTERNATIONAL,  
14 JAQUEZ, SAUERACKER, CHEN, KISHABA, and HAWORTH acted as an unlicensed  
15 mortgage broker.

16 62. In or about March 2007, FREMONT contacted plaintiff to inform him that the February  
17 2007 payment was not paid, which KISHABA had promised that INTERNATIONAL  
18 would pay from loan proceeds. (See Exhibit E.)

19 63. According to FREMONT, no payment was made for the loan payment due on February 1,  
20 2007.

21 64. Plaintiff requested that FREMONT assist in discovering the status of the missing  
22 \$40,476.92 and the missing February 1, 2007 payment. Fremont made no effort to assist.

23 65. INTERNATIONAL, KISHABA, CHEN, JAQUEZ, and SAUERACKER refused to  
24 communicate with plaintiff or offer any explanations or solutions as to the missing  
25 payment or funds.

26 66. Plaintiff made payments of over \$17,000 to FREMONT; however, FREMONT failed to  
27 properly apply and credit the payments.

28 67. On July 30, 2007, FREMONT sold and/or transferred its interest in receiving the benefits

1 of the Note secured by the property. Because MERS is the nominal title holder, Plaintiff  
2 is unaware of the entity which was entitled to receive the benefits of the Note. Based on  
3 information and belief, Fremont sold the right to receive the benefits of the subject Note  
4 to GMAC or TCIF. (See letter from FREMONT dated July 30, 2007 attached hereto as  
5 "Exhibit I" and incorporated by reference.)

6 68. Plaintiff expected that he would receive a payment booklet from GMAC 'and waited to  
7 begin making the payments until he received the payment booklet.

8 69. Due to the actions of defendants in relation to the funds that were never given to plaintiff  
9 and FREMONT'S misapplication of plaintiff's payments, plaintiff was substantially  
10 behind in payments by August 2008.

11 70. Plaintiff attempted on several occasions to have GMAC investigate the missing funds,  
12 misapplied payments, and to work out forbearance plans.

13 71. GMAC failed to properly account for and apply funds plaintiff paid to FREMONT.

14 72. GMAC failed to properly account for and apply funds plaintiff paid to GMAC.

15 73. On or about October 23, 2007, GMAC sent plaintiff a Notice of Default and caused the  
16 same to be recorded with the Orange County Recorder's Office. (See Notice of Default  
17 dated October 23, 2007 attached hereto as "Exhibit J" and incorporated by reference.)

18 74. GMAC accepted over \$3,500.00 in relation to one forbearance plan, but then rejected the  
19 forbearance agreement.

20 75. In two other instances, GMAC returned payments by the plaintiff in the approximate  
21 amounts of \$3,000 and \$7,500.

22 76. On or about February 26, 2008, GMAC sent plaintiff Notice of Trustee's Sale with the  
23 sale to take place on March 26, 2008. (See Notice of Trustee's Sale Dated February 26,  
24 2008 attached hereto as "Exhibit K" and incorporated by reference.)

25 77. On or about September 22, 2008, GMAC caused the property to be sold at a foreclosure  
26 sale. Title was placed in GMAC's name. After the property was sold at foreclosure  
27 auction, GMAC was the legal title holder. GMAC twice brought unlawful detainer  
28 actions against Plaintiff claiming to be the owner of the property.

1 78. GMAC failed to properly calculate sums due by plaintiff in relation to the foreclosure of  
2 the Trust Deed, by failing to properly apply payments plaintiff made to FREMONT and  
3 to GMAC.

4 79. Plaintiff contends that Defendant Fremont made the subject loan with the intent to  
5 foreclose and steal Plaintiff's equity. On March 8, 2007, the FDIC ordered Fremont to  
6 cease and desist its sub-prime lending.

7 80. On or about March 20, 2009, GMAC transferred title to the property to Truman Capital.

8 81. On May 15, 2009, Truman Capital transferred title to to Island Source II via a grant deed.

9  
10 FIRST CAUSE OF ACTION  
11 FOR NEGLIGENCE  
AS AGAINST FREMONT and CHICAGO TITLE

12 82. Plaintiff realleges and incorporates paragraphs 1 through 81 as though fully set forth.

13 83. Plaintiff alleges this first separate and distinct cause of action for negligence as against  
14 Fremont, Chicago Title and Does 1 to 25.

15 84. Defendants Fremont, Chicago Title and Does 1 to 25 had a duty to deliver the proceeds of  
16 the subject Note secured by Deed of Trust to Plaintiff. This required that the Note/loan  
17 proceeds be delivered to a licensed escrow company.

18 85. Fremont and Chicago Title breached their duty to Plaintiff by failing to ascertain that  
19 International Escrow, International Mortgage and their employees were not licensed.

20 86. As set forth below, the INTERNATIONAL defendants stole a substantial portion of the  
21 proceeds of the Note and failed to transfer to Fremont the first month's payment which  
22 was held in escrow. Because International and its employees were not licensed, they were  
23 not entitled to any commissions, points, premiums or other proceeds from the subject  
24 Note.

25 87. As a direct and proximate result of the breach of duty by Defendants Fremont and  
26 Chicago Title, Plaintiff only a small portion of the anticipated cash out of the loan and the  
27 prior loan on the property was paid off with a higher interest rate note, as well as the loss  
28 of use of said cash out to "prime the pump" of his business which was in need of capital



1 and to make needed repairs to his home.

2  
3 SECOND CAUSE OF ACTION  
4 FOR COMMON COUNTS  
5 AS AGAINST FREMONT, CHICAGO TITLE, KISHABA, JAQUEZ, SAUERACKER,  
6 INTERNATIONAL MORTGAGE, INC. INTERNATIONAL ESCROW,  
7 HAWORTH, and CHEN

8 88. Plaintiff realleges and incorporates paragraphs 1 through 87 as though fully set forth.

9 89. Plaintiff alleges this first separate and distinct cause of action for negligence as against  
10 Fremont, Chicago Title, KISHABA, JAQUEZ, SAUERACKER, INTERNATIONAL  
11 MORTGAGE, INC. INTERNATIONAL ESCROW, HAWORTH, and CHEN and Does  
12 1 to 25.

13 90. Plaintiff alleges that Defendants Fremont, Chicago Title, KISHABA, JAQUEZ,  
14 SAUERACKER, INTERNATIONAL MORTGAGE, INC. INTERNATIONAL  
15 ESCROW, HAWORTH, and CHEN, and each of them, became indebted to Plaintiff for  
16 money had and received by Defendants, and each of them, for the benefit of Plaintiff in  
17 the amount of \$773,500.

18 91. The reasonable value due and unpaid to Plaintiff is estimated to be \$173,500 plus  
19 prejudgment interest in an amount subject to proof.

20 92. Plaintiff is entitled to attorneys fees and costs pursuant to \_\_\_\_\_.

21 THIRD CAUSE OF ACTION  
22 BREACH OF FIDUCIARY DUTY  
23 (Against JASON KISHABA, SANDRA JAQUEZ, PETER SAUERACKER,  
24 INTERNATIONAL MORTGAGE, INC. INTERNATIONAL ESCROW, ANTHONY  
25 HAWORTH, CAITLIN CHEN)

26 93. Plaintiff repeats and realleges the allegations of paragraphs 1 through 92, above, as  
27 though fully set forth herein at length.

28 94. Defendants owed a duty to plaintiff to act in accordance with statutory procedures for .  
GMAC had a further duty to follow legal process for Notice of a Trustee's Sale.

95. Defendants KISHABA, JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL  
further breached their duties to plaintiff in failing to give plaintiff required disclosures  
and failing to properly advise the plaintiff as to the terms and conditions of the loan

1 transaction.

- 2 96. Defendant's JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL had a duty to  
3 plaintiff to ensure that all persons dealing with plaintiff's loan were properly licensed,  
4 which they breached.
- 5 97. Defendants JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL breached its  
6 duty to plaintiff as his Escrow Agent by accepting, depositing, and retaining over \$40,000  
7 in funds belonging to the plaintiff without written instructions signed by the plaintiff.
- 8 98. Defendants JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL breached its  
9 duty to plaintiff as by failing and refusing to account for funds, communicate with,  
10 plaintiff, and provide documents as requested.
- 11 99. As a direct and proximate result of defendants' breach of duties, plaintiff has suffered  
12 damages in amounts exceeding the jurisdictional limits of this court and, which will be  
13 proven at the time of trial.

14 FOURTH CAUSE OF ACTION  
15 MISREPRESENTATION

16 (Against JASON KISHABA, SANDRA JAQUEZ, PETER SAUERACKER,  
INTERNATIONAL MORTGAGE, INC. INTERNATIONAL ESCROW, ANTHONY  
HAWORTH, CAITLIN CHEN, G AND Z APPRAISERS, NAZEH MUAYADAZEM)

- 17 100. Plaintiff repeats and realleges the allegations of paragraphs 1 through 99, above, as  
18 though fully set forth herein at length.
- 19 101. Beginning in June 2006 KISHABA misrepresented the terms and conditions on the  
20 plaintiff's loan, as more fully alleged above. KISHABA further misrepresented his  
21 employment status and ability to legally act as a mortgage broker with  
22 INTERNATIONAL through CHEN'S license.
- 23 102. INTERNATIONAL, JAQUEZ, SAUERACKER, and KISHABA further misrepresented  
24 on multiple occasions, the amount of cash that plaintiff would receive from the refinance.  
25 They further misrepresented that the increased fees and points were required by Fremont  
26 rather than to line their own pockets.
- 27 103. Further, INTERNATIONAL MORTGAGE, CHEN, KISHABA, HAWORTH, JAQUEZ  
28 and SAUERACKER misrepresented that they were licensed to arrange the loan when

1 their license had in fact been suspended.

2 104. On September 23, 2006, G AND Z APPRAISERS, NAZEH MUAYADAZEM performed  
3 an appraisal of the subject real property and knowingly overstated the value of the subject  
4 property so as to induce Plaintiff to enter into the Note secured by Deed of Trust. The  
5 value stated in the appraisal was \$983,000.00, while the true value was \$683 ,000.00.  
6 Defendants INTERNATIONAL MORTGAGE, CHEN, KISHABA, HAWORTH,  
7 JAQUEZ and SAUERACKER induced G & Z and Muayadazen to misrepresent the value  
8 of the property, and approved and ratified such misrepresentation knowing the falsity  
9 thereof so as to induce Plaintiff to enter into the Note secured by Deed of Trust. Based on  
10 information and belief, Fremont knew the value of the property was overstated, knew it  
11 was going to be shut-down by the federal government, and made the loan with the intent  
12 to defraud Plaintiff.

13 105. Plaintiff is informed believes and based thereon alleges that when defendants made the  
14 representation as alleged herein, defendants had no reasonable ground for believing them  
15 to be true. Defendants made these representations with the intention of inducing plaintiff  
16 to act in reliance on these representations in the manner alleged,' or with the exception  
17 that plaintiff would so act.

18 106. Plaintiff, at the time these representations were made by defendants and at the time the  
19 plaintiff took the actions herein alleged, was ignorant of the falsity of defendants'  
20 representations and believed them to be true.

21 107. In reliance on the above-alleged false representations, plaintiff was induced to continue  
22 with the refinance, forgo other refinance options, and incur substantial penalties and fees  
23 on his existing mortgage.

24 108. Plaintiff would not have refinanced the SUBJECT PROPERTY with defendants if not for  
25 the above-alleged false representations by defendants.

26 109. Plaintiff's reliance on defendants' representations were justified because defendants were  
27 mortgage, escrow, and real estate professionals.

28 110. As a proximate result of defendants' negligence as herein alleged, plaintiff has been

1 damaged in an amount to be determined at trial.

2 111. In doing the' acts herein alleged above, defendants acted with oppression, fraud and  
3 malice, and plaintiffs are entitled to exemplary and punitive damages.

4 112. Plaintiff seeks compensation for costs of suit herein incurred, including but not limited to  
5 attorney's fees.

6 FIFTH CAUSE OF ACTION  
7 FOR REFORMATION OF CONTRACT  
(AS AGAINST FREMONT and MERS, GMAC, TCIF, ISLAND SOURCE  
8 as SUCCESSORS IN INTEREST TO FREMONT)

9 113. Plaintiff repeats and realleges the allegations of paragraphs 1 through 110 as though fully  
10 set forth herein at length.

11 114. Plaintiff contends that INTERNATIONAL MORTGAGE, INTERNATIONAL  
12 ESCROW, and their agents and employees were unlicensed to act as mortgage brokers at  
13 all times relevant.

14 115. Plaintiff contends that the loan is usurious in that it exceeds the maximum interest rate  
15 that may be charged on loans in writing for use primarily for personal, family, or  
16 household purposes. Because International, which arranged the Note secured by Deed of  
17 Trust, was not licensed to do so, said Note secured by Deed of Trust was not exempted  
18 from the interest rate limitations on loans, made, or arranged by any person licensed as a  
19 real estate broker by the State of California and secured in whole or in part by liens on  
20 real property.

21 116. As such, the interest rate, which is illegal, should be stricken from the Note secured by  
22 Deed of Trust, and the Note secured by Deed of Trust should be rewritten so that all  
23 payments made should go directly towards the principal of the loan.

24 117. Further, because at all times relevant, International Escrow was not a licensed California  
25 Escrow company and International Mortgage was not a licensed Mortgage Broker at any  
26 time relevant to the within action, all monies delivered to them and neither delivered to  
27 Plaintiff nor expended to pay Plaintiff's prior home loan should be considered payments  
28 towards the principal on the Note Secured by Deed of Trust.

1 SIXTH CAUSE OF ACTION  
2 BREACH OF CONTRACT  
(Against Defendants FREMONT, MERS, GMAC, TCIF, ISLAND SOURCE and DOES 1-25)

3 118. Plaintiff repeats and realleges the allegations of paragraphs 1 through 115, above, as  
4 though fully set forth herein at length.

5 119. Plaintiff pleads this third separate and distinct cause of action as against FREMONT,  
6 MERS, GMAC, TCIF, ISLAND SOURCE and DOES 1 - 25.

7 120. Plaintiff and FREMONT entered into written contracts, namely the a promissory Note,  
8 and Deed of Trust, regarding refinancing the SUBJECT PROPERTY. (See Exhibit G.)

9 121. As part of the eventual contract, FREMONT was to loan to plaintiff the sum of \$773,500  
10 with at least \$65,605.36 in cash directly to the plaintiff. Because INTERNATIONAL and  
11 its employees and agents were unlicensed, all of the proceeds of the loan, less monies  
12 used to pay off the prior loan secured by the property, should have been delivered to  
13 Plaintiff.

14 122. FREMONT caused only \$25,128.44 to be delivered to Plaintiff and breached the contract  
15 by failing to deliver over \$40,476.92 in funds to the plaintiff, INSTEAD delivering the  
16 funds to INTERNATIONAL MORTGAGE and INTERNATIONAL ESCROW, both of  
17 which were unlicensed. INTERNATIONAL stole the proceeds and took substantial  
18 points and fees to which it was not entitled. As such, there has been no effective delivery  
19 of some or all of the proceeds of the Note to Plaintiff.

20 123. FREMONT further breached the contract by attempting to collect payments on the  
21 \$40,476.92 that was never delivered to the plaintiff.

22 124. An additional \$85,000 was unlawfully delivered to INTERNATIONAL, which funds it  
23 was not entitled to and which funds were not delivered to Plaintiff.

24 125. As FREMONT'S successors in interest or nominal trustees of the Note secured by Deed  
25 of Trust, MERS, GMAC, TCIF, and ISLAND SOURCE, stand in FREMONT'S shoes  
26 and are responsible for all past misdeeds of FREMONT and/or are subject to any defenses  
27 Plaintiff may have to enforcement of the subject Note secured by Deed of Trust.

28 126. GMAC, TCIF, MERS and ISLAND SOURCE, through the purchase of the Note and

1 Deed of Trust secured by the SUBJECT PROPERTY, are also are parties to those  
2 contracts with plaintiff.

3 127. FREMONT and GMAC breached the written contract by failing to properly account for  
4 funds due to plaintiff, attempting to collect on debts secured by fraud, failing to properly  
5 post payments by plaintiff to both FREMONT and GMAC, and by wrongfully foreclosing  
6 on the Trust Deed.

7 SEVENTH CAUSE OF ACTION  
8 BREACH OF CONTRACT  
9 (Against Defendants KISHABA, JAQUEZ, SAUERACKER, INTERNATIONAL  
MORTGAGE, INC., INTERNATIONAL ESCROW, ANTHONY HAWORTH, and CAITLIN  
CHEN)

10 128. Plaintiff repeats and realleges the allegations of paragraphs 1 through 125, above, as  
11 though fully set forth herein at length.

12 129. INTERNATIONAL also had mortgage broker and a written escrow contract with  
13 plaintiff.

14 130. INTERNATIONAL breached the mortgage broker contract through misrepresentations,  
15 bait and switch, and failing to complete the refinance on the promised term.  
16 INTERNATIONAL also breached the mortgage broker contract by being prohibited from  
17 acting as a mortgage broker and escrow agent at all times relevant.

18 131. For example, INTERNATIONAL through its agent KISHABA initially promised to  
19 charge only one half broker point, which would have culminated in a broker fee of  
20 \$3,867.50. INTERNATIONAL ended up charging over 3.128 points culminating in a  
21 \$24,195.08 broker fee. On top of that, INTERNATIONAL ended up getting a substantial  
22 Yield Spread Premium, which it failed to properly disclose to plaintiff. Further, the  
23 INTERNATIONAL defendants stole and failed to deliver to Plaintiff approximately  
24 \$110,000 in proceeds of the Note secured by Deed of Trust, through unearned fees,  
25 points, yield spread premiums and theft.

26 132. Plaintiff has performed all conditions, covenants and promises required on his part to be  
27 performed in accordance with the terms and conditions of the contract or his performance  
28 is excused by the material breaches of defendants.

1 133. On or about March 2007 and thereafter, Plaintiff discovered that defendants were not  
2 performing their obligations pursuant to the written contracts.

3 134. Plaintiff has suffered damages in an amount to be proven at trial.

4 135. Plaintiff seeks compensation for costs of suit herein incurred, including but not limited to  
5 attorneys fees.

6 EIGHTH CAUSE OF ACTION  
7 DECEIT

8 (Against INTERNATIONAL ESCROW, INTERNATIONAL MORTGAGE, JASON  
KISHABA, SANDRA JAQUEZ, PETER SAUERACKER, CAITLIN CHEN, ANTHONY  
HAWORTH)

9 136. Plaintiff repeats and realleges the allegations of paragraphs 1 through 134, above, as  
10 though fully set forth herein at length.

11 137. Plaintiff is informed, believes, and thereon alleges that KISHABA took documents from  
12 the three different document signings to create one fraudulent loan documentation  
13 package.

14 138. Plaintiff is informed, believes, and thereon alleges that KISHABA'S creation of one loan  
15 documentation package with documents signed on three different occasions with different  
16 terms amounts to forgery.

17 139. At the time defendants made the above alleged statements, defendants, and each of them,  
18 knew that the representations and documents were false.

19 140. Defendants have unlawfully used the falsified documents and fraudulent conduct in  
20 attempting to conduct a trustee's sale and obtain a non-judicial foreclosure and unlawful  
21 detainer action.

22 141. As a direct and proximate result of the reliance upon the truth of defendants'  
23 representations, Plaintiff has suffered damages in an amount unknown at this time but  
24 within the jurisdiction of this court. In addition to the funds already paid, plaintiff will be  
25 required to expend substantial additional funds to set aside the events derivative of  
26 defendants' conduct. Plaintiff does not know the full extent of such expenditures and  
27 other consequential damages at the present time, but will seek leave of court to amend  
28 this pleading when that amount has been ascertained.

1 142. Defendants' conduct in making these intentional misrepresentations was done with  
2 oppression, fraud or malice, in that defendants willfully, consciously and despicably  
3 disregarded Plaintiffs' rights. Plaintiff is therefore entitled to punitive damages in an  
4 amount to be determined at trial.

5 NINTH CAUSE OF ACTION  
6 CANCELLATION OF WRITTEN INSTRUMENT  
(Against Fremont, GMAC, TCIF, Island Source)

7 143. Plaintiff repeats and realleges the allegations of paragraphs 1 through 141, above, as  
8 though fully set forth herein at length.

9 144. This ninth separate and distinct cause of action for cancellation of written instrument is  
10 pleaded as against Fremont, and GMAC, TCIF and Island Source as successors in interest  
11 or assigns of the Note secured by Deed of Trust entered into between Plaintiff and  
12 Defendant Fremont. It is pleaded as an alternative to the fifth cause of action for  
13 reformation of contract, and is in no way intended to vitiate the allegations therein.  
14 Plaintiff will choose his remedy at time of trial.

15 145. There is an existence a certain written instrument dated December 20, 2006, which is the  
16 disputed trust deed (Exhibit "G") between plaintiff and defendant FREMONT.

17 146. The Trust Deed (Exhibit "G") was procured through defendants' fraud,  
18 misrepresentations, and fraudulent compilation of documents, as described hereinabove.  
19 If the disputed trust deed is left outstanding, Plaintiff will be subjected to serious and  
20 substantial injury in that the fraudulently procured document eliminating all of plaintiff's  
21 interest in the subject property.

22 147. Plaintiff offers by this Complaint to return any property delivered to him from the  
23 proceeds of this action.

24 148. The fraudulent conduct of defendants herein was oppressive and despicable and subjected  
25 Plaintiff to cruel and unjust hardships in conscious disregard of Plaintiff's rights, and  
26 therefore Plaintiff seeks exemplary and punitive damages.

27 TENTH CAUSE OF ACTION  
28 FOR WRONGFUL FORECLOSURE  
(AS AGAINST FREMONT, GMAC, TCIF, ISLAND SOURCE and Does 1 to 25)



1 149. Plaintiff repeats and realleges the allegations in paragraphs 1 through 148 above as  
2 though fully set forth herein at length.

3 150. Based on the foregoing frauds, failure of Defendant Fremont to deliver monies under the  
4 subject Note secured by Deed of Trust, improper accounting by Fremont and GMAC, and  
5 illegal and usurious interest rate and unlawful/illegal fees and points, Plaintiff contends  
6 that at the time of the foreclosure sale, he was current on payments. He further contends  
7 that the forbearance agreement between Plaintiff and GMAC was without consideration.  
8 Plaintiff further contends that after striking the interest, he had paid nearly 8 years of  
9 payments at the time of the wrongful foreclosure.

10 151. Plaintiff contends that GMAC, TCIF and Island Source

11 152. Plaintiff requests the foreclosure sale be set aside and that all subsequent transfers of title  
12 be vacated.

13  
14 ELEVENTH CAUSE OF ACTION  
QUIET TITLE

15 (Against Defendants FREMONT, GMAC, TCIF, ISLAND SOURCE, and DOES 1-25)

16 153. Plaintiff repeats and realleges the allegations of paragraphs 1 through 152, above, as  
17 though fully set forth herein at length.

18 154. Plaintiff's title is based on the facts plead hereinabove, and incorporated by reference.

19 155. Plaintiff is seeking to quiet title against all adverse claims of defendants (the adverse  
20 claims) to wit:

- 21 a. The claims of the fictitiously named defendants described in paragraphs 23;  
22 b. The claims of the unknown defendants described in paragraph 22, whether or not  
23 any such claim is known to plaintiff;  
24 c. The unknown, uncertain or contingent claims, if any, of any defendant;  
25 d. The claim of defendants, FREMONT, GMAC, TCIF and ISLAND SOURCE  
26 described hereinabove, as the adverse claims are without any right whatever.  
27 Defendants have no right, title, estate, lien or interests whatever in the property  
28 adverse to plaintiff's title.

1 e. Plaintiff seeks to quiet title as of November 1, 2004.

2  
3 TWELFTH CAUSE OF ACTION  
4 VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200  
(Against Defendants INTERNATIONAL, FREMONT, GMAC, and DOES 1-25)

5 156. Plaintiff repeats and realleges the allegations of paragraphs 1 through 135, above, as  
6 though fully set forth herein at length.

7 157. Defendants, and each of them, committed acts of unfair business practices, as defined by  
8 California Business & Professions Code §17200 et seq., by engaging in acts which  
9 include but are not limited to, making loans based on made up information which  
10 defendants, and each of them, falsified; using bait and switch tactics; making loans  
11 without confirming or verifying borrower information; making loans without providing  
12 the borrower with sufficient, accurate and understandable information regarding the terms  
13 and conditions of the loan; making loans without providing the borrower with sufficient,  
14 accurate and understandable information regarding the nature and extent of the financial  
15 risk being assumed by the borrower; and making loans without regard to the financial  
16 ability of the borrower to pay.

17 158. These acts all as alleged above violate California Business & Professions Code §17200 et  
18 seq., in the manner alleged above and, based on information and belief in the following  
19 further respects:

- 20 a. Engaging in predatory lending practices in dealing with plaintiff, including but not  
21 limited to, the use of high pressure sales tactics and the falsification of plaintiff's  
22 loan application information;  
23 b. Failing to provide notices and disclosures require by TILA;  
24 c. Engaging in falsifying loan documents; and  
25 d. Other acts that plaintiffs are presently unaware of.

26 159. As a direct and proximate result of the aforementioned acts, defendants, and each of  
27 them, obtained unwarranted fees from plaintiff for brokering and servicing the loan.  
28 Predictably, plaintiff is now unable to refinance his loan to get out of the defendants'

1 program and will incur even more damages to his equity and credit. Plaintiff has suffered  
2 injury as alleged herein.

3 160. Plaintiff individually and on behalf of the public, seeks an order of this court enjoining  
4 defendants and prohibiting each of the said defendants from predatory loan practices of  
5 the nature and kind herein alleged, as the public and plaintiff will be irreparably harmed if  
6 such order is not granted.

7 161. Defendants breached the implied covenant of good faith and fair dealing as alleged above.

8 162. As a proximate result of the aforementioned acts and omissions by defendants, plaintiff  
9 has suffered loss of monies in a sum to be proven at the time of trial. It has also become  
10 reasonably, necessary for plaintiffs retain counsel to recover amounts due under the  
11 contract.

12 163. The aforementioned acts were performed by defendants maliciously, fraudulently and  
13 oppressively entitling plaintiffs to punitive damages in an amount appropriate to punish  
14 the defendants.

15 THIRTEENTH CAUSE OF ACTION  
16 VIOLATION OF TRUTH AND LENDING ACT, 15 U.S.C. § 1601 ET SEQ., AND  
17 FEDERAL RESERVE REGULATION Z 12 C.F.R. § 226 ET SEQ.  
(Against FREMONT, Does 1 to 25)

18 164. Plaintiff repeats and realleges the allegations of paragraphs I through 163, above, as  
19 though fully set forth herein at length.

20 165. This consumer credit transaction is subject to the plaintiff's right of rescission as  
21 described by 15 U.S.C. §1635 and Regulation Z §226.23 (12 C.F.R. §226.23).

22 166. Defendants failed to provide TILA disclosures that reflect the terms of the' legal  
23 obligation between the parties (as required by 15 U.S.C. §163(14) and Regulation Z  
24 5226.17(c)(1).

25 167. In the course of this consumer credit transaction, defendants violated 15 U.S.C. §1635(a)  
26 and Regulation Z §226.17(c)(1) by failing to deliver to plaintiff two copies of a Notice of  
27 the Right to Rescind which correctly identified the transaction and 'contained the  
28 appropriate "material disclosures" required to reflect the true and correct terms of the

1 legal obligation of the parties.

2 168. In the course of this consumer credit transaction, defendant creditor failed to deliver all  
3 "material disclosures" required by the Act and Regulation Z, including the following: a)  
4 A true and correct TIL disclosure showing the true and correct terms and legal obligation  
5 of the parties.

6 169. In the course of this consumer credit transaction, defendants failed to respond properly to  
7 the plaintiffs' consumer rescission notice as required by 15 U.S.C. §1635 and Regulation  
8 Z §226.15 and §226.23(d) by failing to rescind its security interest in the plaintiff's home.

9 170. Around March 17, 2008, the plaintiff rescinded the transaction by sending to each  
10 defendant creditor and/or assignee a Notice of Rescission by facsimile.

11 171. A true and correct copy of the Notice of Rescission is attached hereto as Exhibit "L" and  
12 by this referenced is incorporated herein.

13 172. Defendant creditors and assignees received copies of the plaintiff's Notice of Rescission  
14 on or about March 17, 2008.

15 173. Defendants have failed to take any action necessary or appropriate to reflect the  
16 termination of any security interest created under the transaction, including the security  
17 interest, as required by 15 U.S.C. §1635(b) and Regulation Z §226.23(d)(2).

18 174. As a result of the aforesaid violations of the Act and Regulation Z, pursuant to 15 U.S.C.  
19 §1635(a), §1640(a), and §1641(c), defendants are liable to plaintiffs for:

- 20 a. Rescission of this transaction.
- 21 b. Termination of any security interest in plaintiffs' property created under the  
22 transaction.
- 23 c. Return of any money or property given by t plaintiffs to anyone, including the  
24 defendant, in connection with this transaction.
- 25 d. Statutory damages of \$2,000 for defendants' failure to respond properly to  
26 plaintiffs' rescission notice.
- 27 e. The forfeiture of return of loan proceeds,
- 28 f. Actual damages in an amount to be determined at trial.

1 g. Reasonable attorneys fees.

2 h. Any and all other remedies that may become applicable during discovery related  
3 to this complaint.

4 175. By the filing of this action, Plaintiff offers to return to Defendants all sums determined by  
5 this Court to be due from the proceeds of this action.

6  
7 FOURTEENTH CAUSE OF ACTION  
8 DEFAMATION AND TORTIOUS INTERFERENCE WITH CREDIT  
9 AS AGAINST GMAC, Does 1 to 25

9 176. Plaintiff repeats and realleges the allegations of paragraphs 1 through 175, above, as  
10 though fully set forth herein at length.

11 177. Defendant GMAC has published false ports through various credit reporting agencies  
12 that he owes over \$16 million as a result of the present foreclosure action.

13 178. Said publications are false.

14 179. Plaintiff has demanded of Defendant GMAC's xcdvxxz

15 180. Said publications were published with malice within the meaning of Civil Code § 3294.

16 181. Said publications have damaged Plaintiff's business in that he is unable to lease property  
17 to store his business and trade tools, inventory and perform automotive and break repair  
18 services. Further, he is unable to get a loan to purchase inventory. Plaintiff's business  
19 has been damaged in an amount subject to proof.

20  
21 FIFTEENTH CAUSE OF ACTION  
22 FOR AN ACCOUNTING  
(As Against All Defendants)

23 182. Plaintiff repeats and realleges Paragraphs 1 through 187 as though fully set forth herein.

24 183. Plaintiff requests a complete accounting for all transactions related to the subject Note  
25 secured by Deed of Trust, including, without limitation, all disbursements, payments,  
26 fees, points, additions to principal, penalties, interest, etc.

27 WHEREFORE, plaintiff prays for, judgment as against Defendants, and each of them, as  
28 follows:

1 ON THE FIRST CAUSE OF ACTION FOR NEGLIGENCE

- 2 1. For general damages according to proof;  
3 2. For special damages according to proof;

4 ON THE SECOND CAUSE OF ACTION FOR COMMON COUNTS

- 5 3. For damages according to proof;  
6 4. For consequential damages according to proof;

7 ON THE THIRD CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

- 8 5. For general damages according to proof;  
9 6. For special damages according to proof;  
10 7. For punitive and exemplary damages in an amount appropriate to punish the Defendants  
11 and deter other from engaging in similar conduct.

12 ON THE FOURTH CAUSE OF ACTION FOR MISREPRESENTATION

- 13 8. For general damages according to proof;  
14 9. For special damages according to proof;  
15 10. For punitive and exemplary damages in an amount appropriate to punish the Defendants  
16 and deter other from engaging in similar conduct.

17 ON THE FIFTH CAUSE OF ACTION FOR REFORMATION OF CONTRACT

- 18 11. For a Declaration that the interest rate on the subject Note secured by Deed of Trust is  
19 unlawful and/or usurious;  
20 12. For a Declaration that all fees, points and yield spread premiums paid to  
21 INTERNATIONAL are unlawful;  
22 13. For a Declaration that all fees, premiums and points retained by INTERNATIONAL were  
23 monies which were not paid to Plaintiff pursuant to the terms of the subject Note secured  
24 by Deed of Trust;  
25 14. Reformation of the Contract either striking the Note and Deed of Trust in their entirety  
26 based on the wilful and outrageous conduct of the Defendants and granting Plaintiff title  
27 free and clear of all encumbrances, or, in the alternative, for an order striking

28 ON THE SIXTH CAUSE OF ACTION BREACH OF CONTRACT

1 15. For damages according to proof;

2 16. For incidental and consequential damages according to proof;

3 ON THE SEVENTH CAUSE OF ACTION BREACH OF CONTRACT

4 17. For damages according to proof;

5 18. For incidental and consequential damages according to proof;

6 ON THE EIGHTH CAUSE OF ACTION FOR DECEIT

7 19. For general damages according to proof;

8 20. For special damages according to proof;

9 21. For punitive and exemplary damages in an amount appropriate to punish the Defendants  
10 and deter other from engaging in similar conduct.

11 ON THE NINTH CAUSE OF ACTION FOR CANCELLATION OF WRITTEN  
12 INSTRUMENT

13 22. That the court declare that (1) the Trust Deed (Exhibit G) is void and that it be  
14 surrendered to the clerk of the court for cancellation and destruction and (2) that  
15 defendants be ordered to pay plaintiffs the following sums:

16 23. The consideration paid by plaintiffs with interest thereon at 10% per annum from the date  
17 of filing this complaint;

18 24. Exemplary damages;

19 25. For reasonable attorney fees and costs.

20 ON THE TENTH CAUSE OF ACTION FOR WRONGFUL FORECLOSURE

21 26. For damages according to proof;

22 27. For consequential damages according to proof;

23 28. For punitive and exemplary damages in an amount appropriate to punish Defendants and  
24 deter others from engaging in similar conduct;

25 ON THE ELEVENTH CAUSE OF ACTION FOR QUIET TITLE

26 29. For a judicial-declaration setting aside and canceling the non-judicial foreclosure sale  
27 deed;

28 30. For a declaration that Plaintiff Robert Sweeting is the true owner of the subject property;

1 31. For exemplary damages;

2 ON THE TWELFTH CAUSE OF ACTION FOR VIOLATION OF BUSINESS AND  
3 PROFESSIONS CODE §17200

4 32. For general damages according to proof;

5 33. For special damages according to proof;

6 34. For punitive and exemplary damages in an amount appropriate to punish Defendants and  
7 deter others from engaging in similar conduct;

8

9 ON THE THIRTEENTH CAUSE OF ACTION FOR VIOLATION OF TRUTH AND  
10 LENDING ACT, 15 U.S.C. § 1601 ET SEQ., AND FEDERAL RESERVE  
11 REGULATION Z 12 C.F.R. § 226 ET SEQ.

12 35. Rescission of this transaction.

13 36. Termination of any security interest in plaintiffs' property created under the transaction.

14 37. Return of any money or property given by the plaintiffs to anyone, including the  
15 defendant, in connection with this transaction.

16 38. Statutory damages of \$2,000 for defendants' failure to respond properly to plaintiffs'  
17 rescission notice.

18 39. The forfeiture of return of loan proceeds

19 40. Actual damages in an amount to be determined at trial.

20 41. Reasonable attorneys fees.

21 42. Any and all other remedies that may become applicable during discovery related to this  
22 complaint.

23 ON THE FOURTEENTH CAUSE OF ACTION DEFAMATION AND TORTIOUS  
24 INTERFERENCE WITH CREDIT

25 43. For general damages according to proof;

26 44. For special and consequential damages according to proof;

27 45. For punitive and exemplary damages in an amount appropriate to punish Defendants and  
28 deter others from engaging in similar conduct;



1 ON THE FIFTEENTH CAUSE OF ACTION FOR ACCOUNTING

2 46. For a complete accounting for all transactions related to the subject Note secured by Deed  
3 of Trust, including, without limitation, all disbursements, payments, fees, points,  
4 additions to principal, penalties, interest, etc.

5  
6  
7 ON THE FIRST CAUSE OF ACTION:

- 8 1. For damages according to proof;  
9 2. For consequential damages according to proof;

10 ON THE SECOND CAUSE OF ACTION:

- 11 3. For damages according to proof;  
12 4. For consequential damages according to proof;  
13 5. For punitive and exemplary damages in an amount appropriate to punish the Defendants  
14 and deter other from engaging in similar conduct.

15 ON THE THIRD CAUSE OF ACTION:

- 16 6. For actual damages according to proof;  
17 7. For consequential damages according to proof;  
18 8. For punitive and exemplary damages in an amount to be determined at trial;

19 ON THE FOURTH CAUSE OF ACTION:

- 20 9. For actual damages according to proof;  
21 10. For consequential damages according to proof;  
22 11. For punitive and exemplary damages in an amount to be determined at trial;

23 ON THE FIFTH CAUSE OF ACTION:

- 24 12. That the court declare that (1) the Trust Deed (Exhibit G) is void and that it be  
25 surrendered to the clerk of the court for cancellation and destruction and (2) that  
26 defendants be ordered to pay plaintiffs the following sums:  
27 13. The consideration paid by plaintiffs with interest thereon at 10% per annum from the date  
28 of filing this complaint;

1 14. Exemplary damages;

2 15. For reasonable attorney fees and costs.

3 ON THE SIXTH CAUSE OF ACTION:

4 16. For a judicial-declaration setting aside and canceling the non-judicial foreclosure sale  
5 deed;

6 17. For a declaration that Plaintiff Robert Sweeting is the true owner of the subject property;

7 18. For exemplary damages;

8 ON THE SEVENTH CAUSE OF ACTION

9 16. For special damages according to proof;

10 19. For punitive damages;

11 ON THE EIGHTH CAUSE OF ACTION

12 20. A declaration that plaintiff, is the owner of the subject property and that no defendant has  
13 any interest in the subject property adverse to plaintiff.

14 ON THE NINTH CAUSE OF ACTION

15 21. For compensatory damages;

16 22. For punitive damages;

17 23. For attorney's fees;

18 ON THE TENTH CAUSE OF ACTION

19 24. For Restitution Damages;

20 25. For Statutory Damages;

21 26. For costs of suit incurred herein, including reasonable attorney's fees;

22 ON THE ELEVENTH CAUSE OF ACTION

23 27. For General Damages

24 ON THE TWELFTH CAUSE OF ACTION

25 28. Rescission of this transaction.

26 29. Termination of any security interest in plaintiffs' property created under the transaction.

27 30. Return of any money or property given by the plaintiffs to anyone, including the  
28 defendant, in connection with this transaction.

- 1 31. Statutory damages of \$2,000 for defendants' failure to respond properly to plaintiffs'  
2 rescission notice.  
3 32. The forfeiture of return of loan proceeds  
4 33. Actual damages in an amount to be determined at trial.  
5 34. Reasonable attorneys fees.  
6 35. Any and all other remedies that may become applicable during discovery related to this  
7 complaint.

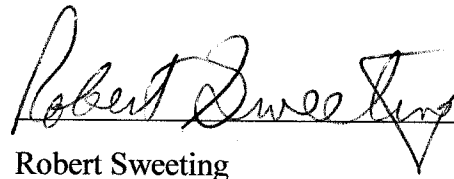
8 ON THE THIRTEENTH CAUSE OF ACTION

- 9 36. Compensatory;  
10 37. Punitive damages;

11 ON ALL CAUSES OF ACTION:

- 12 38. For costs of suit incurred herein; and  
13 39. For such other and further relief as the court deems just and proper.

14 Respectfully submitted,

15  
16   
17 Robert Sweeting

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


1 VERIFICATION  
2 [CCP §§ 446, 2015.5]

3 I, Robert Sweeting, declare as follows:

4 I am the Plaintiff in this action.

5 I have read and know the contents of the attached Second Amended Complaint and know  
6 the contents thereof. The facts set forth therein are true of my own personal knowledge.

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct. Executed on December 8, 2009 at Huntington Beach, California.

9   
10 Robert Sweeting

11  
12 [C:\Users\POWERBRAKEBOB\AppData\Local\Microsoft\Windows\Temporary Internet

13 Files\Low\Content.IE5\ETLIY3BE\Second\_Amended\_Complaint\_(Working)[1].wpd]  
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**Exhibit 1-B**

**Proof of Claim No. 1361**

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor: RESIDENTIAL CAPITAL, LLC (GMAC) <b>GMAC MORTGAGE, LLC</b>		Case Number: 12-12020 (MG) <b>AND 12-12032</b>
NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>ROBERT SWEETING</b>		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. <b>Court Claim Number:</b> _____ (If known) <b>Filed on:</b> _____
Name and address where notices should be sent: <b>ROBERT SWEETING 7071 WARNER AVE. BOX F 81 HUNTINGTON BEACH, CA. 92647</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number: <b>562 394 8218</b> email: <b>POWERBRAKEBOB@MSN.COM</b>		
Name and address where payment should be sent (if different from above):		
Telephone number: email:		
1. Amount of Claim as of Date Case Filed: <b>\$49,000,000 - \$79,170,000.00</b> <b>ORANGE COUNTY CASE # 30-2010-00410079</b> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)( ).
2. Basis for Claim: (See instruction #2) <b>MORTGAGE NOTE / COURT ACTION / JUDGEMENT</b>	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)
3. Last four digits of any number by which creditor identifies debtor: <b>1331</b>		
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6)		
7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)		
8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "redacted") DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
9. Signature: (See instruction #9) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <b>ROBERT SWEETING</b> Title: _____ Company: _____ Address and telephone number (if different from notice address above): _____ <b>Robert Sweeting 9/26/12</b> (Signature) (Date)		
Telephone number: Email:		



RECEIVED  
OCT 16 2012  
KURTZMAN CARSON CONSULTANTS

- DO NOT FILE WITH THE COURT -  
-UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): ROBERT SWEETING, PRO PER 7071 WARNER AVE. BOX F 81 HUNTINGTON BEACH, CA. 92647		TELEPHONE NO.: 562-394-8218	FOR COURT USE ONLY
ATTORNEY FOR (name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 CIVIC CENTER DRIVE, WEST MAILING ADDRESS: CITY AND ZIP CODE: SANTA ANA 92702 BRANCH NAME: CENTRAL			
PLAINTIFF: ROBERT SWEETING DEFENDANT: JASON KISHABA, ET AL			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)			CASE NUMBER: 30-2010-00410079

To (name of one defendant only): GMAC MORTGAGE, LLC.  
Plaintiff (name of one plaintiff only): ROBERT SWEETING  
seeks damages in the above-entitled action, as follows:

6045198

- |   | AMOUNT           |
|---|------------------|
| 1. General damages  |                  |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience .....   | \$ 2,000,000.00  |
| b. <input checked="" type="checkbox"/> Emotional distress .....   | \$ 2,000,000.00  |
| c. <input checked="" type="checkbox"/> Loss of consortium .....   | \$ 500,000.00    |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) .....   | \$               |
| e. <input checked="" type="checkbox"/> Other (specify) LOSS OF CREDIT RATING .....  | \$ 1,500,000.00  |
| f. <input checked="" type="checkbox"/> Other (specify) LOSS OF BOSCH CONTRACT .....   | \$ 3,000,000.00  |
| g. <input type="checkbox"/> Continued on Attachment 1.g.  |                  |
| 2. Special damages  |                  |
| a. <input type="checkbox"/> Medical expenses (to date) .....  | \$               |
| b. <input type="checkbox"/> Future medical expenses (present value) .....   | \$               |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date) .....   | \$ 750,000.00    |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) .....  | \$ 2,500,000.00  |
| e. <input checked="" type="checkbox"/> Property damage .....  | \$ 3,584,000.00  |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) .....  | \$               |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) .....  | \$               |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) .....                              | \$               |
| i. <input type="checkbox"/> Other (specify) .....   | \$               |
| j. <input type="checkbox"/> Other (specify) .....   | \$               |
| k. <input type="checkbox"/> Continued on Attachment 2.k.  |                  |
| 3. <input checked="" type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify).. | \$ 79,170,000.00 |

when pursuing a judgment in the suit filed against you.

Date: AUGUST 1, 2012

ROBERT SWEETING

(TYPE OR PRINT NAME)

(Proof of service on reverse)



(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

PLAINTIFF: ROBERT SWEETING	CASE NUMBER:
DEFENDANT: JASON KISHABA, ET AL	30-2010-00410079

**PROOF OF SERVICE**

(After having the other party served as described below, with any of the documents identified in item 1, have the person who served the documents complete this Proof of Service. Plaintiff cannot serve these papers.)

1. I served the

- a. ☒ Statement of Damages ☐ Other (specify):
- b. on (name): GMAC MORTGAGE, LLC.
- c. by serving ☒ defendant ☐ other (name and title or relationship to person served):
- d. ☒ by delivery ☐ at home ☐ at business  
(1) date:  
(2) time:  
(3) address: 19100 VON KARMAN AVE. STE 700, IRVINE, CA.
- e. ☐ by mailing  
(1) date:  
(2) place:

2. Manner of service (check proper box):

- a. ☒ **Personal service.** By personally delivering copies. (CCP § 415.10)
- b. ☒ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP § 415.20(a))
- c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP § 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)
- d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP § 415.30) (Attach completed acknowledgment of receipt.)
- e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP § 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)
- f. ☐ Other (specify code section):  
☐ additional page is attached.

3. At the time of service I was at least 18 years of age and not a party to this action.

4. Fee for service: \$ 0

5. Person serving:

- a. ☐ California sheriff, marshal, or constable
- b. ☐ Registered California process server
- c. ☐ Employee or independent contractor of a registered California process server
- d. ☒ Not a registered California process server
- e. ☐ Exempt from registration under Bus. & Prof. Code § 22350(b)

f. Name, address and telephone number and, if applicable, county of registration and number:


I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

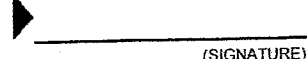
Date: JULY 27, 2012

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

  
(SIGNATURE)

  
(SIGNATURE)



REQUEST FOR JUDICIAL NOTICE  
Court of Appeal Case No.: G045198  
Superior Court Case No.: 30-2010-00410079

**COURT OF APPEAL**  
**STATE OF CALIFORNIA**  
**FOURTH APPELLATE DISTRICT**  
**DIVISION THREE**

---

ROBERT SWEETING,

Plaintiff and Appellant,

vs.

GMAC MORTGAGE, LLC

Defendant and Respondent,

---

REQUEST FOR JUDICIAL NOTICE

---

Robert Sweeting, Pro Per  
7071 Warner Ave., Unit F81  
Huntington Beach, CA 92647  
(562) 394-8218

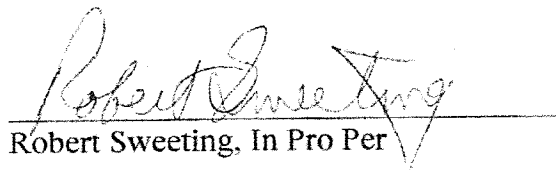
Pursuant to Ev. C. § 452(d), Appellant requests the Court take judicial notice that Sweeting v. Fremont, Orange County Superior Court Case No. 30-2008-0104237, referred to herein as “the first action,” and the underlying case , Sweeting v. GMAC, were both in Dept. C-25. (Thus, the trial court had intimate knowledge of both cases.)

Appellant further requests that the Court take judicial notice of the following documents pursuant to Ev.C § 452(d):

Order Suspending International’s License	Exhibit “A”
First Unlawful Detainer Complaint - OCSC #30-2008-00221178	Exhibit “B”
Motion to Set Aside Dismissal (First Action)	Exhibit “C”
Second Unlawful Detainer Complaint, OCSC #30-2009-00280569	Exhibit “D”
Motion for Extension of Time (First Action)	Exhibit “E”
Doe Amendments (First Action)	Exhibit “F”
Order granting Summary Judgment	Exhibit “G”
Notice of Appeal (First Action)	Exhibit “H”
GMAC Demurrer to the Second Amended Complaint (First Action)	Exhibit “I”
Opposition to Demurrer to Second Amended Complaint (First Action)	Exhibit “J”

Certified copies of all documents have been filed with the Court as part of the Clerks Transcript in Sweeting v. GMAC, Court of Appeal Case No.: G043281. They will be lodged with the Court under separate cover.

Dated: November 29, 2011

  
Robert Sweeting, In Pro Per

1 On November 29, 2011, served the following entitled document(s):

2 **Request for Judicial Notice**

3 I served said documents on GMAC by placing a true copy thereof in a sealed envelope  
4 addressed as set out below or as set out in the attached Service List incorporated herein by  
reference.

5 Severson & Werson  
6 19100 Von karman Ave., Suite 700  
Irvine, CA 92612

7 **[ x ] BY MAIL (C.C.P. §§ 1012, 1013, (a), 1013a)**

8 [ ] I deposited such sealed envelope(s) with postage thereon fully prepaid in the mail  
at Huntington Beach, California.

9 [ ] I placed the sealed envelope for collection and mailing following ordinary  
10 business practices. I am readily familiar with the firm's business practice of  
collection and processing of correspondence for mailing with the United States  
11 Postal Service. Under the ordinary course of business, it would be deposited with  
the U.S. Postal Service on that same day with postage thereon fully prepaid at La  
Habra, California.

12 **[ ] BY PERSONAL SERVICE (C.C.P. § 1011)**

13 [ ] I caused to be personally delivered the above mentioned to the addresses set out  
above on this date.

14 [ ] By Special Messenger Service with specific instructions for same day delivery to  
the addresses set out above on this date.

15 **[X] (State)** I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

16 **[ ] (Federal)** I declare that I am employed in the office of a member of the bar of this Court at  
whose direction the service was made.

17 Executed on November 29, 2011, in Huntington Beach, California

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20 JASON P. GOLD  
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Court of Appeal Case No.: G045198  
Superior Court Case No.: 30-2010-00410079

**COURT OF APPEAL  
STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE**

---

ROBERT SWEETING,  
Plaintiff and Appellant,

vs.

GMAC MORTGAGE, LLC  
Defendant and Respondent,

---

OPENING BRIEF ON APPEAL  
FROM AN ORDER OF THE ORANGE COUNTY SUPERIOR COURT,  
THE HONORABLE STEVEN SIEFERT, JUDGE PRO TEM PRESIDING,  
GRANTING DEMURRER TO COMPLAINT WITHOUT LEAVE TO AMEND

---

Robert Sweeting, Pro Per  
7071 Warner Ave., Unit F81  
Huntington Beach, CA 92647  
(562) 394-8218

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## **I. STATEMENT OF THE CASE**

This is the fourth case between the parties. It arises from the false reporting by GMAC to credit reporting agencies of a \$16 million debt which GMAC claims they were owed by Appellant. As a result of the false report(s), your Appellant has been prevented from leasing a new business premises and has been required to pay 25% interest on a car loan. (See Complaint at Clerk Transcript Supplemental ("CTS") pages 1 - 5). Plaintiff filed a complaint with three causes of action based on common law defamation. These include: 1) Defamation/tortious Interference with Credit; 2) Accounting; and 3) Declaratory and Injunctive Relief.

There were three prior actions between the parties. One concerned the theft of proceeds from a home loan made by Fremont Investment which was arranged by an unlicensed mortgage broker and had a usurious interest rate. Plaintiff believed GMAC purchased the loan from Fremont. GMAC reported to credit reporting agencies that Plaintiff/Appellant owed them a debt of about \$400,000 in regard to that loan. GMAC won its Summary Judgment Motion in the first action, claiming was merely the loan processor. It claims the judgment in the prior action renders res judicata the claims in the

present lawsuit and filed a demurrer on those grounds. The Court granted the demurrer.

## **II. STATEMENT OF APPEALABILITY**

This Appeal is from a Final Summary Judgement of the Orange County Superior Court, dated April 29, 2011, and is Authorized by the Code of Civil Procedure, section 904.1 subsection (a)(1) to be heard in the Court of Appeals, Fourth District, Division III

## **III. STATEMENT OF FACTS**

This is the fourth case between the parties. It arises from the false reporting by GMAC to credit reporting agencies of a \$16 million debt which GMAC claims they were owed by Appellant. As a result of the false report(s), your Appellant has been prevented from leasing a new business premises and has been required to pay 25% interest on a car loan. (See Complaint at Clerk Transcript Supplemental ("CTS") pages 1 - 5). Plaintiff filed a complaint with three causes of action based on common law defamation. These include: 1) Defamation/tortious Interference with Credit; 2) Accounting; and 3) Declaratory and Injunctive Relief.

The prior action concerned the theft of proceeds from a home loan which was arranged by an unlicensed mortgage broker and had a

usurious interest rate. GMAC reported to credit reporting agencies that Plaintiff/Appellant owed them a debt of about \$400,000 in regard to that loan.

The trial court granted GMAC's demurrer without leave to amend based on the doctrine of res judicata and collateral estoppel because of rulings in the first action.

GMAC filed a demurrer in the present action claiming it was barred by the doctrines of res judicata and collateral estoppel. (CTS: 19 - 30.) This claim is based on the fact it was granted summary judgment in the first action, and later the court granted a Motion to Strike the Second Amended Complaint which was filed after your appellant filed an appeal from the grant of summary judgment. The Second Amended Complaint incorporated many of the allegations against GMAC as are contained in the present action. These claims were not incorporated in earlier pleadings in the first action.

Because the grant of the demurrer in the present action was based on the judgment in the first action, Appellant sets forth in some detail the facts concerning that action as follows:

**THE FIRST ACTION:** The first action between the parties was filed on March 20, 2008, Orange County Superior Court Case No. 30-

2008-0104237. CTS: 33 - 114. It initially involved an attempt at rescission of a bad home loan made by Fremont Investment and Loan ("Fremont") and sought the return of funds stolen by the unlicensed escrow company to which the funds were sent. The loan was a variable interest rate loan with minimum interest of over 10%. (CTS: 102) The loan was made in December 2006, just before Fremont was put out of business by the federal government for misdeeds in the mortgage marketplace. The loan was arranged by an entity known as International Mortgage and the funds were sent to its sister company, International Escrow. These entities had their real estate licenses suspended prior to the making of the underlying loan and subsequently were entirely stripped of their licenses because of the theft of loan proceeds from prior victims. (CTS: 210 - 269; Request for Judicial Notice Exhibit "A.")

The interest rate on the loan was usurious as it was over 10% and not arranged by a licensed real estate broker. CTS: 102. In addition, most of the cash-out from the loan, which was needed to re-finance Plaintiff's 60 year old business, was stolen by International. (See Second Amended Complaint in first action at CTS: 210-269)

In or about March or April 2007, the loan was sold. Plaintiff believed it had been sold to GMAC.

In or about June 2008, Plaintiff was abandoned by his counsel and the First Action was dismissed for lack of prosecution. While the case was “dismissed,” GMAC foreclosed on your Appellant’s home and took title in its name.

On November 11, 2008, GMAC filed an Unlawful Detainer action (“UD”) as against Plaintiff in West Orange County Superior Court, Case No. 30-2008-00221178. (Plaintiff requests the Court take judicial notice of Complaint attached to Request for Judicial Notice as Exhibit “B.”)

As soon as Appellant discovered the dismissal, he prepared a Motion to Set Aside the Dismissal. On or about December 24, 2008, Plaintiff, now in pro per, filed his Motion to Set Aside Dismissal of the first Action. The Motion was filed on December 24, 2008 and heard on January 28, 2009. (CTS: 280. Request for Judicial Notice Exhibit “C.”)

GMAC served its Summary Judgment motion in the Unlawful Detainer action on or about December 31, 2008 so that Plaintiff/Appellant was unable to retain counsel to defend the action.

Instead of filing an Opposition, Plaintiff attempted to file a Motion to Stay, Dismiss or in the alternative, to consolidate the UD with this First case. It was rejected as not timely filed, although the facts set forth therein would constitute a defense to the Summary Judgment Motion.

On January 9, 2009, Summary Judgment was granted in the UD while your Plaintiff/Appellant's 473 to Vacate and Set Aside the Dismissal was still to be heard in the First Action.

In early February 2009, the First Action was reinstated.

On or about March 15, 2009, GMAC transferred by Grant Deed, title to the subject property to TCIF REO GCM California, LLC.

Despite a total lack of title, the pendency of the first action, the fact that title, when in GMAC's name, was gained through fraud, that GMAC refused to apply payments which had been properly made to and stolen by Fremont, GMAC's predecessor in interest, despite Plaintiff's heroic attempts to cure the non-existent default in loan payments, multiple felonies, embezzlement, fraud in the inducement of the loan, all committed by the UNLICENSED mortgage broker, escrow company, Fremont, GMAC and just about everyone else

involved, on July 1, 2009, GMAC again filed another Unlawful Detainer against your appellant. OCSC Case No. 30-2009-00280569. GMAC eventually dismissed that case for lack of title. (See Complaint in OCSC Case No. 30-2009-00280569 attached to Request for Judicial Notice as Exhibit "D.")

On July 17, 2009, GMAC served its Motion for Summary Judgment on attorney Steven Hertz, who was assisting Plaintiff with the deposition scheduled by Fremont. (He was not Plaintiff's attorney of record, did not file a responsive pleading, and did not give the Motion to Plaintiff.) (CTS: 280. See Motion for Extension of Time attached to Request for Judicial Notice as Exhibit "E.")

On or about September 9, 2009, Plaintiff filed numerous Doe Amendments, naming GMAC's successors in title along with MERS and several others. These entities demurred on the grounds there were no causes of action alleged against them. (CTS: 280. See Notices of Doe Amendments attached to Request for Judicial Notice as Exhibit "F.")

Despite a finding that service of the Summary Judgment Motion was inadequate, on or about **October 28, 2009**, the Court granted GMAC's summary judgment motion. GMAC's principal

defense on Summary Judgment was that it was merely the loan processor for some unnamed entity despite the fact it was filing unlawful detainers in its own name and claiming it owned the Plaintiff's home as a result of the aforesaid foreclosure. (CTS: 280, See Order granting Summary Judgment attached to Request for Judicial Notice as Exhibit "G."). *In other words, GMAC asserted and "proved" in the first action that your appellant did not owe GMAC any money on the debt associated with the first action.*

On December 15, 2009, your Appellant filed his Verified Second Amended Complaint in the first action. The Second Amended Complaint for the first time addressed the false credit report. (CTS: 210 - 269)

On December 17, 2009, the trial court denied Appellant's Motion for Reconsideration of the grant to GMAC of summary judgment. (CTS 318 - 319)

On or about January 5, 2010, your appellant filed a Notice of Appeal resulting in Court of Appeal Case No.: G043281. (See Notice of Appeal attached to Request for Judicial Notice as Exhibit H.)

Despite the fact that the first action was being appealed as to the grant of summary judgment to GMAC, on January 7, 2010,



GMAC filed a Demurrer the Second Amended Complaint based on claims of res judicata and collateral estoppel. (See Request for Judicial Notice Exhibit "I.") Appellant opposed the Motion on the grounds the matter was on appeal. (See Request for Judicial Notice Exhibit "J.") The Demurrer was granted on or about March 11, 2011 on the grounds of res judicata and collateral estoppel. (CTS: 292 - 293). The trial court subsequently denied a Motion for Reconsideration. (CTS: 281)

THE PRESENT ACTION: The present appeal concerns the fourth litigation. It involves the false report to various credit reporting agencies by Defendant GMAC that Plaintiff owes GMAC a debt of over \$16 million. As aforesaid, it was determined in the first action that Plaintiff owed GMAC nothing in regard to the home loan which is the subject of that action. Despite the fact that Plaintiff and Appellant Robert Sweeting requested an investigation by the credit reporting bureaus, GMAC re-reported to those agencies that Sweeting owed this debt. GMAC demurred on the grounds of res judicata and collateral estoppel. The Court granted the motion.

Your appellant timely filed his notice of appeal.

#### IV. INTRODUCTION

Respondent GMAC relies on the doctrine of res judicata in its malicious attempt to continue to defame Appellant's credit in violation of the FCRA and California Civ. Code § 1785.25(a). The trial court in the first action is that Plaintiff/Appellant does not owe any debt to GMAC. Yet, despite multiple attempts to have credit reporting agencies investigate and correct the report that Plaintiff owes GMAC over \$16,000,000 has been met with an affirmation from GMAC that its report is correct. Each request by Appellant to credit reporting agencies to investigate and correct GMAC's is a new violation of the FCRA and should give rise to a new cause of action. Yet, the trial court, once without jurisdiction, and now in this action, has refused to act. Plaintiff was not required to amend his first action against GMAC to allege these causes of action because the cause of action did not accrue until over a year after the first action was filed. Nor does Appellant seek to relitigate the same causes of action as in the first case, to wit: usury, theft of proceeds of a home loan by an unlicensed and unbonded escrow company, fraud in the execution of the loan, improper handling of payments, bureaucratic misfeasance by

GMAC in servicing the fraudulent loan on behalf of its principal, and wrongful foreclosure.

As set forth below, Plaintiff concurs that the FCRA preempts may state court causes of action, but that the trial court abused its discretion in denying leave to amend the Complaint. The doctrine of res judicata does not apply.

**V. THE ORDER OF THE TRIAL COURT GRANTING  
GMAC'S DEMURRER TO THE SECOND AMENDED  
COMPLAINT IN THE FIRST ACTION WAS VOID BECAUSE  
THE TRIAL COURT LACKED JURISDICTION OVER GMAC**

The term 'jurisdiction,' is "used continuously in a variety of situations, has so many different meanings that no single statement can be entirely satisfactory as a definition." *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 287 (1941). "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties. [Citing situations providing examples.] . . .

[para. ] But in its ordinary usage the phrase 'lack of jurisdiction' is not limited to these fundamental situations . . . . [It] may be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no 'jurisdiction' (or

power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.” *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 288 (1941). When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and ‘thus vulnerable to direct or collateral attack at any time.’ *Barquis v. Merchants Collection Assn.*, 7 Cal.3d 94, 119 (1972).

The general rule as to all causes, whether criminal or civil, is the valid filing of appeal vests jurisdiction of a cause in the appellate court until determination of the appeal and issuance of the remittitur. *People v. Sonoqui*, 1 Cal.2d 364 (1934); *People v. Getty*, 50 Cal.App.3d 101, 107 (1975). Ordinarily in that case “the trial court loses jurisdiction during that period to do anything in connection with the cause which may affect the judgment.” [Citations.]” *People v. Getty*, 50 Cal.App.3d 101, 107 (1975).

Here, the Second Amended Complaint in the first action (which is the first complaint to contain causes of action similar to the ones in the present action) was filed two days before the trial court denied Appellant’s Motion for Reconsideration of the grant of summary judgment to GMAC. The Notice of Appeal was filed two days before

GMAC filed its Demurrer to the Second Amended Complaint. Since jurisdiction was vested in the Court of Appeal, the trial court had no jurisdiction over GMAC to either grant or deny the Demurrer as to the new causes of action in Second Amended Complaint. Because the trial court lost jurisdiction while the case was on appeal to do anything in connection with the cause which might affect the judgment, it was required to abstain from making any ruling as it would modify the appealed judgment. Your appellant lacked any mandatory appeal process to determine the validity of the ruling on the demurrer and would be required to file a discretionary Writ.

Given a lack of jurisdiction in the trial court, the ruling should have no effect on the present litigation.

**VI. THE DOCTRINE OF RES JUDICATA  
DOES NOT BAR THE PRESENT ACTION BECAUSE THE  
CAUSE OF ACTION FOR INTERFERENCE WITH CREDIT  
BECAUSE IT WAS NOT LITIGATED OR REQUIRED TO BE  
LITIGATED IN THE PRIOR ACTION**

In *Rice v. Crow*, 81 Cal. App. 4th 725 (Cal. App. 2d Dist.

2000), the Court discussed the doctrine of res judicata as follows:

The doctrine of res judicata consists of two different aspects. (*Vezina v. Continental Cas. Co.* (1977) 66 Cal. App. 3d 665, 669 [136 Cal. Rptr. 198].) First, "it precludes parties or their privies from relitigating a cause of action that has been finally determined by a

court of competent jurisdiction.' " " (Ibid., italics added.) This aspect of res judicata has traditionally been referred to as "res judicata" or "claim preclusion." Second, " " 'Any issue necessarily decided in such litigation is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit as to the parties on a different cause of action.' " [Citations.] " (Id. at pp. 669-670.) This latter aspect of res judicata is known as "collateral estoppel" (ibid.) or "issue preclusion." (Vandenberg v. Superior Court (1999) 21 Cal. 4th 815, 824 [88 Cal. Rptr. 2d 366, 982 P.2d 229]; Kelly v. Vons Companies, Inc. (1998) 67 Cal. App. 4th 1329, 1335 [79 Cal. Rptr. 2d 763].)

"Res judicata is applicable only to the same causes of action between the same parties or their privies. As stated in Branson v. Sun-Diamond Growers (1994) 24 Cal. App. 4th 327, 340 [29 Cal. Rptr. 2d 314]: " 'In its primary aspect, res judicata operates as a bar to the maintenance of a second suit between the same parties or parties in privity with them on the same cause of action.' " (Italics added.) (See also Krier v. Krier (1946) 28 Cal. 2d 841, 843 [172 P.2d 681] ["It is settled, however, that a judgment in a prior action between the same parties on the identical cause of action is res judicata, and a bar to a second suit thereon . . . ." (Italics added.)]; Goddard v. Security Title Ins. & Guar. Co. (1939) 14 Cal. 2d 47, 51 [92 P.2d 804] [" 'First, a final judgment, rendered upon the merits by a court having jurisdiction of the cause, is conclusive of the rights of the parties and those in privity with them, and is a complete bar to a new suit between them on the same cause of action. This is the general doctrine of res judicata' " (Italics omitted.)].)

In determining the validity of a plea of **res judicata** three questions are pertinent: (1) Was the issue decided in the prior adjudication identical with the one presented in the action in

question? (2) Was there a final judgment on the merits? (3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? *Bernhard v. Bank of America*, 19 Cal.2d 807 (1942)

In determining whether an issue was decided in a prior action, California relies on the primary right theory. This is a theory of code pleading which provides that a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. *McKee v. Doud*, 152 Cal. 637, 641 (1908). The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. *Slater v. Blackwood*, 15 Cal.3d 791, 795 (1975). A pleading that states the violation of one primary right in two causes of action contravenes the rule against "splitting" a cause of action. *Wulfjen v. Dolton*, 24 Cal.2d 891, 894-895 (1944).

As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. *Slater v. Blackwood*, supra, 15 Cal.3d 791, 795. It must therefore be distinguished from the legal theory on which liability for that injury is

premised: "Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief." (Ibid.) The primary right must also be distinguished from the remedy sought: "The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief, and the relief is not to be confounded with the cause of action, one not being determinative of the other." *Wulffen v. Dolton*, supra, 24 Cal.2d 891, 895-896.

The primary right theory has a fairly narrow field of application. It is invoked most often when a plaintiff attempts to divide a primary right and enforce it in two suits. The theory prevents this result by either of two means: (1) if the first suit is still pending when the second is filed, the defendant in the second suit may plead that fact in abatement. Code Civ. Proc., § 430.10, subd. (c); *Wulffen v. Dolton*, supra, 24 Cal.2d 891, 894-895; or (2) if the first suit has terminated in a judgment on the merits adverse to the plaintiff, the defendant in the second suit may set up that judgment as a bar under the principles of res judicata. *Panos v. Great Western Packing Co.*, 21 Cal.2d 636, 638-640 (1943). The latter application of the primary right theory appears to be most common: numerous cases hold that



when there is only one primary right an adverse judgment in the first suit is a bar even though the second suit is based on a different legal theory (e.g., *Johnson v. American Airlines, Inc.*, 157 Cal.App.3d 427, 432 (1984)) or seeks a different remedy (e.g., *Stafford v. Yerge*, 129 Cal.App.2d 165, 171 (1954).

Here, the primary rights involved in the two lawsuit are different. The first case, OCSC Case No. 30-2008-104237, involved a contract for a loan entered allegedly into by Plaintiff and Fremont. It involved forged loan documents and theft of loan proceeds by an unlicensed escrow company and mortgage broker. This action arises from a false credit report complained of in the present action did not arise until well after the Complaint was filed and Plaintiff was still attempting to resolve the matter informally with Defendant's counsel when the trial court improperly granted GMAC's summary judgment motion in the first action.

The primary right which Plaintiff seeks to vindicate are different between the first action and the present action. The first case involves a fraudulent loan while the second involves a false credit report on a non-existent loan. While there is to some extent an overlap of facts, to wit, the false credit report may be (but is not

really) related to the underlying fraudulent loan, the causes of action here are two distinct claims such that even if Plaintiff loses the first case in its entirety, the present case would survive because GMAC either did not own the underlying fraudulent loan (and was merely a servicer or defrauded the Court into believing such) and the amounts GMAC reported Plaintiff owes are approximately 22 times the amount actually owed on the fraudulent loan and because the debt was not owed to GMAC. These claims are completely severable. In fact, GMAC won its summary judgment motion on the grounds Plaintiff did not owe them any money because they were merely servicing the loan.

**VII. PLAINTIFF WAS NOT REQUIRED TO AMEND HIS COMPLAINT IN THE FIRST CASE TO ALLEGE A CAUSE OF ACTION WHICH AROSE AFTER THE COMPLAINT WAS FILED**

In its Demurrer, Defendant and Respondent GMAC asserts, that the doctrine of res judicata bars plaintiff's latest complaint as the asserted claims could have been litigated against GMAC in the prior matter. Citing *Busick v. Workmen's Comp Appeals. Bd.*, 7 Cal.3d 967 (1972). CTS: 25 - 26. This is nonsense.

“Res judicata is not a bar to claims that arise after the initial complaint is filed. These rights may be asserted in a supplemental pleading, but if such a pleading is not filed a plaintiff is not foreclosed from asserting the rights in a subsequent action. (Yager v. Yager (1936) 7 Cal.2d 213, 217 [60 P.2d 422].) The general rule that a judgment is conclusive as to matters that could have been litigated “does not apply to new rights acquired pending the action which might have been, but which were not, required to be litigated [citations].” *Kettelle v. Kettelle*, 110 Cal.App. 310, 312 (1930).

If a building contractor breaches a contract to perform work on your home and you sue for damages, you are not required to amend your complaint to allege a battery when he comes over to your home and hits you in the nose for suing him. You can bring a second lawsuit. This case is no different. GMAC did all sorts of bad acts in regard to processing the loan on Plaintiff’s home. In fact, GMAC must have lied to the Court when it declared in two unlawful detainer actions that they were the owners of Appellant’s home, and then declaring in the first case that they were never the owners of the property, that the Trustee’s Sale inadvertently put title in their name and it was all a mistake. Appellant contends, and the facts will show,

that the false credit report complained of in the present action did not arise until well after the Complaint and First Amended Complaint were filed in the first case. In fact, Plaintiff was still attempting to resolve the matter informally with Defendant's counsel when the trial court improperly granted GMAC's unserved summary judgment motion.

**VIII. PLAINTIFF CAN AMEND HIS COMPLAINT TO STATE  
CAUSES OF ACTION UNDER THE FAIR CREDIT  
REPORTING ACT AND UNDER CIVIL CODE § 1785.25,  
SUBDIVISION (a)**

It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that Plaintiff can state a good cause of action. *Goodman v Kennedy*, 18 C3d 335, 349 (1976). Code of Civil Procedure § 473's provisions "giving the courts the power to permit amendments in furtherance of justice has received a very liberal interpretation by the courts of this state; and that this position is clearly in accord with the modern theories of code pleading, which would permit amendment in the discretion of the court *unless an attempt is made to present an entirely different set of facts by way of the amendment.*" *Chatten v. Martell*, 166 Cal. App.

2d 545 (1958). In *Morgan v. Superior Court of Los Angeles County*,

172 Cal.App.2d 527, 530 (1959), the Court stated:

“While a motion to permit an amendment to a pleading to be filed is one addressed to the discretion of the court, the exercise of this discretion must be sound and reasonable and not arbitrary or capricious. (*Richter v. Adams*, 43 Cal.App.2d 184, 187 [110 P.2d 486]; *Eckert V. Graham*, 131 Cal.App. 718, 721 [22 P.2d 44].) And it is a rare case in which “a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.” (*Guidery v. Green*, 95 Cal. 630, 633 [30 P. 786]; *Marr v. Rhodes*, 131 Cal. 267, 270 [63 P. 364].) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson v. Superior Court*, 97 Cal.App.2d 78 [217 P.2d 119]; *Estate of Herbst*, 26 Cal.App.2d 249 [79 P.2d 139]; *Norton v. Bassett*, 158 Cal. 425, 427 [111 p. 253].)

“Great liberality is indulged in matters of amendment to the end that lawsuits may be determined upon their merits.” *Desny v. Wilder*, 46 Cal.2d 715, 751 (1956).

GMAC contends that Plaintiff is unable to state a cause of action because the FCRA preempts common law causes of action for tortious interference with credit and related common law actions.

(CTS: 27 at fn. 4.) They further claim that Plaintiff has no cause of

action under FCRA because it creates private right. Appellant concurs that he failed to state a cause of action in the Complaint for tortious interference with credit. However, as set forth below, Plaintiff has private rights to sue under both federal and state causes of action.

**A. Plaintiff Can Allege Facts Sufficient to State a Cause of Action on Which Relief May Be Granted under the FCRA**

In *Sainai v. Saltz*, 170 Cal. App. 4th 746 (2009), the Court discussed a private party's right to bring a private cause of action for violation of the FCRA as follows:

The FCRA (15 U.S.C. § 1681 et seq.) was adopted by Congress to ensure accuracy and fairness in credit reporting and to protect the rights of individual consumers. (See 15 U.S.C. § 1681(b); *Jones v. Federated Financial Reserve Corp.* (6th Cir. 1998) 144 F.3d 961, 965; *Pinner v. Schmidt* (5th Cir. 1986) 805 F.2d 1258, 1261.) With respect to furnishers of information to consumer credit reporting agencies, like UDR and First Advantage Corporation, section 623 of the FCRA imposes two general requirements: the duty to provide accurate information (15 U.S.C. § 1681s-2(a)) and the duty to investigate the accuracy of reported information upon receiving notice of a dispute (15 U.S.C. § 1681s-2(b)). To trigger the latter set of duties, however, notice to the furnisher of information must be given pursuant to section 611(a)(2) of the FCRA (15 U.S.C. § 1681i(a)(2)), which requires a consumer credit reporting agency to reinvestigate the current accuracy of information in its files after being notified by the consumer of a dispute and to notify the person who

furnished it with the information about the dispute. That is, to activate the duties imposed by section 623(b) of the FCRA, notice of the dispute must come to the furnisher of the information (UDR) from the credit reporting agency (Experian), not directly from the consumer (Mr. Sanai) himself. (Young v. Equifax Credit Information Services, Inc. (5th Cir. 2002) 294 F.3d 631, 639–640.) “This means that a furnisher of credit information ... has no responsibility to investigate a credit dispute until after it receives notice from a consumer reporting agency. Under the statutory language notification from a consumer is not enough.” (Stafford v. Cross Country Bank (W.D.Ky. 2003) 262 F.Supp.2d 776, 784; accord, Rollins v. Peoples Gas Light and Coke Co. (N.D.Ill. 2005) 379 F.Supp.2d 964, 967; Elmore v. North Fork Bancorporation, Inc. (S.D.N.Y. 2004) 325 F.Supp.2d 336, 340.)

United States Code section 1681s-2(a)(3) provides, “If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.”

United States Code section 1681s-2(b) provides, “(1) In general. [¶] After receiving notice pursuant to section 611(a)(2) of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—[¶] (A) conduct an investigation with respect to the disputed information; [¶] (B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2); [¶] (C) report the results of the investigation to the consumer reporting agency; [¶] (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person

furnished the information and that compile and maintain files on consumers on a nationwide basis; and [¶] (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—[¶] (i) modify that item of information; [¶] (ii) delete that item of information; or [¶] (iii) permanently block the reporting of that item of information. [¶] (2) Deadline. [¶] A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) within which the consumer reporting agency is required to complete actions required by that section regarding that information.”

.....

Although violations of section 623(a) of the FCRA may not be privately enforced, a private cause of action for consumers is generally recognized under section 623(b) of the FCRA (15 U.S.C. § 1681s-2(b)) against furnishers of credit information who fail to comply with the requirements of that provision. (See, e.g., *Nelson v. Chase Manhattan Mortgage Corp.*, supra, 282 F.3d at pp. 1059–1060; *Nelson v. Equifax Information Services, LLC* (C.D.Cal. 2007) 522 F.Supp.2d 1222, 1229–1230; *Pirouzian v. SLM Corp.* (S.D.Cal. 2005) 396 F.Supp.2d 1124, 1127; *Gordon v. Greenpoint Credit* (S.D.Iowa 2003) 266 F.Supp.2d 1007, 1011–1012;

.....

The allegation of notice sufficient to state a private cause of action under 15 United States Code section 1681s-2(b) has two aspects. First, [plaintiff] must allege



he informed [the credit reporting company] Experian of his dispute. ... Second, he must allege Experian contacted [the entity making the false credit report], as required by 15 United States Code section 1681i(a)(2), and requested [the reporting entity] reinvestigate the credit information it had provided.

.....

Because Plaintiff requested Experian contact GMAC for a correction of the false report and GMAC failed to correct it, Plaintiff can state facts sufficient to state a cause of action under the FCRA.

**B. Civ. Code § 1785.25(a) is Not Subject to Preemption under the FCRA**

The FCRA contains two preemption sections affecting state law claims that apply to persons who furnish information under the FCRA. First, 15 United States Code section 1681t(a) provides only state law claims inconsistent with the express provisions of the FCRA are preempted. “Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to

the extent of the inconsistency.” (15 U.S.C. § 1681t(a).) Thus, there is no implied or field preemption: “Congress did not enact the FCRA with the goal of vitiating all state laws, but only those that are inconsistent with the federal law.” *Lin v. Universal Card Services Corp.*, 238 F.Supp.2d 1147, 1151 (N.D.Cal. 2002)

Notwithstanding this general language preserving state laws that do not conflict with the FCRA, however, in 1996 Congress amended the FCRA to strictly limit the availability of consumer's state remedies against furnishers of credit information. As amended, 15 United States Code section 1681t(b) provides, “No requirement or prohibition may be imposed under the laws of any State—[¶] (1) with respect to any subject matter regulated under—[¶] ... [¶] (F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply—[¶] (i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); [20] [¶] (ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on the date of enactment (September 30, 1996) ... .”

Section 1785.25, subdivision (a), involves the obligations of the furnishers of credit information to provide accurate information to credit reporting agencies.

Again, the information provided by GMAC is false. It continues to provide false information to Experian and other Credit Reporting Agencies. Accordingly, Plaintiff can state a cause of action under the California Credit Reporting Agencies Act.

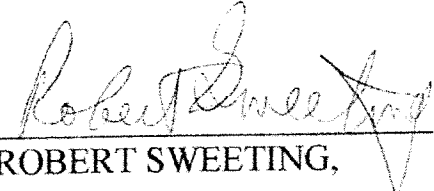
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## **IX. CONCLUSION**

Respondent GMAC relies on the doctrine of res judicata in its malicious attempt to continue to defame Appellant's credit in violation of the FCRA and California Civ. Code § 1785.25(a). What was determined by the trial court in the first action is that Plaintiff/Appellant does not owe any debt to GMAC. This is res judicata and is based on GMAC's own summary judgment motion in the first action. Each request by Appellant to credit reporting agencies to investigate and correct GMAC's false publication that Appellant owes it \$16 million and which GMAC refuses to correct is a new violation of the FCRA and should give rise to a new cause of action. Yet, the trial court, once without jurisdiction, and now in this

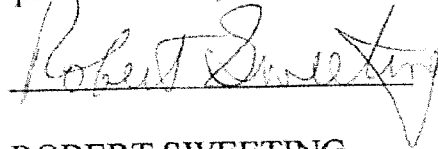
action, has refused to act. Plaintiff was not required to amend his first action against GMAC to allege these causes of action because the did not accrue until over a year after the first action was filed. Nor does Appellant seek to relitigate the same causes of action as in the first case, to wit: usury, theft of proceeds of a home loan by an unlicensed and unbonded escrow company, fraud in the execution of the loan, improper handling of payments, bureaucratic misfeasance by GMAC in servicing the fraudulent loan on behalf of its principal, and wrongful foreclosure. Accordingly, this Court should reverse and remand.

Dated: November 28, 2011

  
ROBERT SWEETING,  
in pro per

### **CERTIFICATION OF WORD COUNT**

Pursuant to California Rules of Court, rule 8.504(d), petitioner provides the instant certificate certifying that the number of words contained in this brief (not including cover pages, this certificate or tables) as indicated by counsel's word processor is 6,110 words.

A handwritten signature in cursive script, appearing to read "Robert Sweeting", is written over a horizontal line.

ROBERT SWEETING

1 On November 29, 2011, served the following entitled document(s):

2 **Opening Brief on Appeal**

3 I served said documents on GMAC by placing a true copy thereof in a sealed envelope  
4 addressed as set out below or as set out in the attached Service List incorporated herein by  
reference.

5 Severson & Werson  
6 19100 Von karman Ave., Suite 700  
Irvine, CA 92612

7 **[ x ] BY MAIL (C.C.P. §§ 1012, 1013, (a), 1013a)**

8 ☐ I deposited such sealed envelope(s) with postage thereon fully prepaid in the mail  
at Huntington Beach, California.

9 ☐ I placed the sealed envelope for collection and mailing following ordinary  
business practices. I am readily familiar with the firm's business practice of  
10 collection and processing of correspondence for mailing with the United States  
Postal Service. Under the ordinary course of business, it would be deposited with  
11 the U.S. Postal Service on that same day with postage thereon fully prepaid at La  
Habra, California.

12 **[ ] BY PERSONAL SERVICE (C.C.P. § 1011)**

13 ☐ I caused to be personally delivered the above mentioned to the addresses set out  
above on this date.

14 ☐ By Special Messenger Service with specific instructions for same day delivery to  
the addresses set out above on this date.

15 **[X] (State)** I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

16 **[ ] (Federal)** I declare that I am employed in the office of a member of the bar of this Court at  
whose direction the service was made.

17 Executed on November 29, 2011, in Huntington Beach, California

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20 JASON P. GOLD  
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**RE: Case G045198, Submitted 11-29-2011 01:35 PM**

From: **Ho, Evelyn** (Evelyn.Ho@jud.ca.gov)  
Sent: Tue 11/29/11 1:39 PM  
To: powerbrakebob@msn.com (powerbrakebob@msn.com)

The following brief has been received:

The following Appellate Brief has been submitted.

Case Number: G045198

Case Name: Sweeting v GMAC Mortgage, LLC

Related Case Information: G043356, G043281,

Name of Party: Robert Sweeting

Type of Brief: Appellant's Opening Brief

Name of Attorney or Self-Represented Party Who Prepared Brief: Robert Sweeting